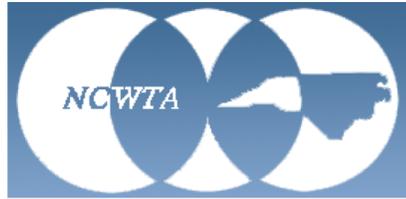


IMPORT COMPLIANCE UPDATE



Presented to:

North Carolina World Trade Association

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Overview

- CUSTOMS ENFORCEMENT UPDATE
 - CUSTOMS ENFORCEMENT REFRESHER
 - CURRENT TARGETING PRIORITIES
 - AD/CVD (TFTEA), APPAREL, FTA, IPR
- FROM NAFTA TO USMCA – WHAT COULD CHANGE?
- SECTION 301 DUTIES ON PRODUCTS FROM CHINA
 - SECTION 301 BACKGROUND
 - 301 DUTY AVOIDANCE
- IMPORTER BEST PRACTICES REMINDER

Customs Enforcement Refresher

Customs and Border Protection

www.cbp.gov



- U.S. Customs and Border Protection (Formerly U.S. Customs Service)
 - The principal government agency responsible for ensuring that goods and people entering and exiting the country do so in compliance with all applicable laws and regulations
 - Serves as the “gate keeper” though many other agencies are involved, for specific types of merchandise (e.g. FDA, EPA, DOT, USDA...)
 - CBP has authority to stop and examine merchandise at the border, and to deny entry.
 - CBP has authority to act on transactions after importation, levy additional duties, assess penalties, and pursue criminal enforcement cases.
 - CBP collects and provides data to the Census Bureau for trade statistics.

Enforcement Techniques

- Risk assessment with increasing volumes
- Electronic import data targeting
 - Known problem importers and foreign vendors
 - Product Description and tariff classification
 - Improbable situations (e.g. bananas from Sweden, or cargo weight unlikely for cargo)
- Physical Exams
 - “Border Search” exception to 4th Amendment
 - No warrant or probable cause requirement
 - Extends inland
 - Exam technologies (K-9 exam, X-rays, VACIS, etc.)
- Informants
 - Competitors, disgruntled ex-employees, brokers, etc.

The Basics

- **Importer of Record** (See 19 U.S.C. 1484a)
 - The Importer of Record (Generally the owner or purchaser of the goods) is liable for the compliant entry of merchandise, the payment of all duties, taxes and fees on the goods, and is the principal party held liable for penalties and other consequences of compliance failures.
 - Even if an importer uses the services of a customs broker, the importer is still ultimately responsible for the work done by the broker.
- **Reasonable Care**
 - Importer of Record is required to exercise “Reasonable Care” as defined by the Customs Modernization Act at 19 USC 1484.
 - “Absence of Negligence”
 - Importer’s duty to be aware of laws and regulations, and comply with them.
 - Use outside resources (attorneys, brokers, consultants) if necessary.

Importing into the United States

- Merchandise is purchased and sent to the United States via sea, air, road, or rail.
- The importer must file an entry / declaration to CBP.
 - This is typically done electronically, and by a licensed customs broker.
- Entry declaration includes informational elements
 - Identity of parties, country of origin, merchandise description and tariff classification, quantities, values, and other information required to determine admissibility.
- Entry is accompanied by or followed up with an Entry Summary, which includes payment of duties, taxes, and fees.
- The vast majority of import transactions are paperless and not reviewed by a human Customs official. (Automated targeting rules are applied.)
 - CBP officers may get transactions to review based on targeting rules, or may decide on their own to target specific shipments.



Assessment of Duties

- Importer has the responsibility of filing entry with correct information, including proper merchandise value, quantities, and tariff classification (which establishes rate of duty).
- Payment of duties is secured by a surety bond paid for by importer.
- CBP either accepts the entry as filed, or can review the entry.
 - This often entails a “Request for Information” being sent to the Importer.
 - Samples may be requested; laboratory analysis may be involved.
- CBP “liquidates” (finalizes) the entry, either as entered, or with an increase or decrease in duties.
- Adverse actions like duty increases may be protested by the importer.
 - Protest are due 180 days after liquidation.
 - Matters can be elevated to Court of International Trade and beyond, but only if a protest was timely filed.

US Court of International Trade

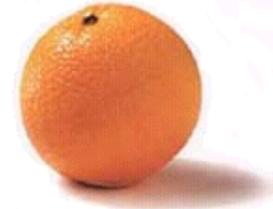
- Article III Court
- National Jurisdiction
 - Located in NYC, or sits in any District Courthouse
- Exclusive jurisdiction over certain cases
 - Matters related to duty assessment, denial of entry of merchandise, Customs penalties, and scope of Antidumping / Countervailing Duty cases.
- Review of CIT decisions goes to the U.S. Court of Appeals for the Federal Circuit
- Appeals from CAFC go to the U.S. Supreme Court

Assessment of Duties (cont'd)

- CBP can review many transactions at once, after the fact, through the regulatory audit process.
 - This can be a comprehensive “Focused Assessment” on a company as a whole, or a limited audit on a specific compliance area.
 - CBP’s focus in the audit process is to review a company’s internal controls and standard operating procedures.
- CBP can assess additional duties on entries not yet finally liquidated.
- On older transactions, CBP can demand penalties and repayment of duties if a penalty action is pursued by the agency.
- CBP or its sister agency, Homeland Security Investigations (“HSI”) can initiate criminal and civil investigations on importers or individuals.
- Statute of limitations for most civil penalty cases is 5 years from the date of violation.

Core Customs Compliance Areas

- Tariff Classification
 - Assigning a unique number from the Harmonized Tariff Schedule
 - Classification dictates duty rate and admissibility requirements
 - Classification can be *very* complicated, and sometimes subjective
- Government Agency Requirements
 - Different types of merchandise are regulated by other agencies, with CBP acting as a gate keeper. (e.g. FDA or USDA for food products, DOT for automobiles, etc.)
Additional information is usually required.
- Declared Value
 - Most duty rates are based on a percentage of the value, so the correct value matters.
 - Usually straightforward, but can be very complex when sales are between related parties.
- Country of Origin and Marking
 - U.S. purchaser has the right to know where a product was made.
 - Origin can be complicated if manufacture happens in multiple countries, or in the case of imported sets of multiple items.



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Core Customs Compliance Areas (cont'd)

- Free Trade Agreements and other special duty free programs
 - These provide for duty free or reduced duty of qualifying merchandise.
 - Qualification requirements are often very complicated.
 - Specific documentary requirements apply.
- Intellectual Property Rights
 - U.S. government protects patents, copyrights, and trademarks.
 - Importing without the IP owners' permission is prohibited.
 - Non-compliance can result in detention and seizure of merchandise, and penalties.
- Antidumping and Countervailing Duties
 - Additional duties applied to combat unfair trade practices by foreign companies and governments. (Administered jointly by CBP, USITC, and Commerce Dept.)
 - Often result in VERY LARGE additional duty assessments.

Customs Enforcement Actions



- Cargo Examinations and Inquiries / Document Requests
- Assessment of Additional Duties or Fees
 - E.g. finding that the entered tariff classification or value was incorrect.
- Liquidated Damages Claims
 - Typically for non-performance issues, such as late filing of entry or filing of entry without payment of duties.
- Detention and Seizure and Forfeiture of goods or conveyances
 - During detention, Importer has option of trying to argue that seizure should not occur
- Civil Penalty Cases
 - Several potential statutes apply. The most common are:
 - 19 U.S.C. 1595: Importation Contrary to Law (smuggling, introduction of inadmissible goods, etc.)
 - 19 U.S.C. 1592: The Customs Fraud Statute
 - 19 U.S.C. 1508/1509: Recordkeeping penalties

Contesting Detentions

- CBP will provide Notice of Detention
 - Importer given opportunity to show that seizure should not occur (e.g. goods are compliant)
 - Can be very difficult with IPR detentions; CBP may not provide much information
- A Customs decision as to admissibility is protestable.
 - If there is no Customs decision as to admissibility after 30 days of importation, then it is deemed detained and a protest can be filed.
 - Importer can request an additional 30 days for good cause
 - Avoid seizure track if resolution possible
- A protest contesting a Customs detention is deemed denied on the 30th day if there has been no Customs action on it.
- The denied protest provides exclusive CIT jurisdiction, with Customs having the burden of showing good cause by a preponderance of the evidence.
- Post-seizure, the jurisdiction is in District Court not CIT

Seizures and Forfeitures

- “In Rem” Action Against The Goods Regardless Of Who Is The Owner
- Border exception applies to goods delivered inland
- Customs can search electronic entry records to easily find past entries
- Customs can order redelivery to the port of entry, and failure to redeliver carries additional fines typically 3 times imported value.

Post-Seizure Options

- Notice of Seizure lists 4 options
 - File a claim and cost bond for the case to be referred to US Attorney for court action.
 - 19 USC 1618 petition for relief
 - 19 USC 1617 Offer in Compromise
 - Request administrative forfeiture
 - Forfeited merchandise transferred to charity or government agency; sold at public auction
 - In IPR cases, sold after obliteration of counterfeit markings, etc.
 - Merchandise destroyed under Customs supervision
 - Export
 - Not allowed in all circumstances

Customs Fraud Statute (19 U.S.C. 1592)

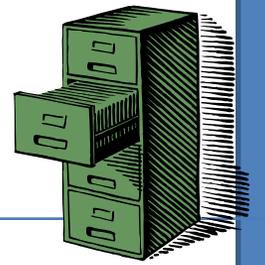
- Penalties Assessed Based on False statement, act, or omission
- Materiality
- Culpability
 - Negligence (“Failure to exercise Reasonable Care”)
 - Penalties assessed at 2 times loss of duties or 20% of merchandise value.
 - Gross Negligence (“Wanton Disregard”)
 - Penalties assessed at 4 times loss of duties or 40% of merchandise value.
 - Fraud (“Knowingly and Intentionally”)
 - Penalties assessed at up to twice the entered value of merchandise.
 - Criminal prosecution is also possible.
- In addition to the above penalties, CBP can demand payment of unpaid duties.
- A penalty can be assessed even if there is NO loss of duties to the government.

Dealing with Section 1592 Penalties



- Penalties may be appealed to issuing Port Office or CBP Headquarters depending on the penalty amount.
 - CBP can reduce penalties to lesser amounts in the presence of mitigating factors
 - CBP can refuse to mitigate in the presence of aggravating factors.
- Offers in Compromise (like a plea bargain, if the importer has a good case).
- The statute of limitations is 5 years from the date of entry (five years from discovery in fraud cases).
- Prior Disclosure
 - If an importer voluntarily discloses the violation and pays back duties without knowing of an open formal investigation, penalty is limited to interest amount on duties.
 - Prior Disclosures should be done very carefully. A poorly done or incomplete disclosure can greatly increase an importer's liabilities.
 - Prior Disclosure only protects an importer against Section 1592 Penalties. Does not protect against other penalties, such as recordkeeping penalties.

Recordkeeping



- Along with the trend toward paperless processing and post-entry review by Customs, the requirements for recordkeeping arose.
- The Customs Modernization Act imposed comprehensive recordkeeping requirements.
 - Customs (a)(1)(A) List (See 19 U.S.C. 1508 appendix)
 - Most records used in the normal course of business (entry, invoice, purchase order...)
 - Import And Export Records must be kept for 5 years after Entry
- Recordkeeping Penalties
 - Willful Failure to Produce: The Lesser of \$100,000 or 75% of Appraised Value Per Release
 - Negligent Failure to Produce: The Lesser of \$10,000 or 40% of Appraised Value per Release
 - If missing documents are relative to eligibility for special rate of duty, transactions will be re-liquidated at applicable non-preferential rate of duty.

CBP Enforcement Resources

- CBP Officers (formerly known as “Inspectors”)
 - The uniformed “front line” of Customs, do physical examination of cargo.
- Import Specialists
 - Make classification, value, FTA, and admissibility determinations
- Fines, Penalties, and Forfeitures (FP&F) Personnel
 - Manage enforcement cases (mitigation, disposition of seized property)
- Centers of Excellence and Expertise (“CEEs”)
 - CBP is migrating toward centralized processing and analysis of imports by industry.
- Special Agents / Criminal Investigators
 - Part of Homeland Security Investigations Directorate of U.S. Immigration and Customs Enforcement (“ICE”), akin to FBI agents in powers.
- Regulatory Audit
- Laboratory Scientists
- Attorneys, Office of Chief Counsel and CBP Headquarters, e.g. OR&R IPR Branch

Customs Enforcement Update

Customs Enforcement Targeting

- COMMERCIAL TARGETING AND ANALYSIS CENTER (CTAC)
 - CROSS- AGENCY COOPERATION
 - FDA, EPA, CPSC, APHIS, OTHERS
 - HEALTH AND SAFETY
 - ENVIRONMENTAL CRIMES
 - WILDLIFE AND CULTURAL PROPERTY
 - ALCOHOL / TOBACCO REVENUE EVASION

Customs Enforcement Targeting

- Priority Trade Issues (“PTIs”)

<https://www.cbp.gov/trade/priority-issues>

- High Risk Areas For:
 - Revenue Loss
 - Harm To US Economy
 - Health And Safety

Customs Enforcement Targeting

- Priority Trade Issues Include:
- Agriculture And Quota
- Antidumping / Countervailing Duties (ADD/CVD)
- Health and Safety
- Intellectual Property Rights
- Revenue
- Textiles / Apparel
- Trade Agreements

ENFORCEMENT – AD/CVD

- TRADE FACILITATION AND ENFORCEMENT ACT OF 2015 (TFTEA)
- TITLE IV, PREVENTATION AND EVASION OF AD/CVD ORDERS
 - A/K/A ENFORCE AND PROTECT ACT (EAPA)
- 19 USC 1517
- 19 CFR PART 165

ENFORCEMENT – AD/CVD

- FORMS OF AD/CVD EVASION
- MISREPRESENT C/O
 - PRODUCT MARKING
 - COMMERCIAL, ENTRY AND SHIPPING DOCUMENTS
- MISREPRESENT PHYSICAL CHARACTERISTICS
 - SCOPE OF ORDERS
 - Defined by petitioner
 - TARIFF CLASSIFICATION
 - Guidance only, Not determinative

ENFORCEMENT – AD/CVD

- EAPA ALLOWS PRIVATE PARTIES OR OTHER AGENCIES TO
 - INITIATE AN INVESTIGATION BY CBP OF ALLEGED AD/CVD EVASION
 - LEARN OF THE OUTCOME
 - CONTEST NEGATIVE FINDINGS
- NO NEW PENALTIES OR ENFORCEMENT AUTHORITIES

ENFORCEMENT – AD/CVD

- CBP STARTS INVESTIGATION 15 DAYS AFTER RECEIPT OF A VALID REQUEST FROM AN INTERESTED PARTY OR OTHER FEDERAL AGENCY
- 300 TO 360 CALENDAR DAYS TO DETERMINE WHETHER THERE IS SUBSTANTIAL EVIDENCE OF EVASION OF AD/CVD ORDER
- IMPORTERS, FOREIGN MANUFACTURERS, EXPORTERS ISSUED QUESTIONNAIRES AND INVESTIGATED

ENFORCEMENT - AD/CVD

- IF CBP FINDS EVASION...
 - SUSPEND LIQUIDATION OF ENTIRES
 - ASK DOC FOR APPLICABLE DUTY RATE
 - REQUIRE IMPORTER TO POST CASH DEPOSIT
 - REFER TO ICE FOR CIVIL OR CRIMINAL ENFORCEMENT
- INTERESTED PARTIES CAN ADMINISTRATIVELY APPEAL FINDING OF NO EVASION, AND SEEK REVIEW AT US COURT OF INTERNATIONAL TRADE

ENFORCEMENT - APPAREL

- APPAREL DUTIES AVERAGE 16%
- APPAREL ACCOUNTS FOR 40% OF ALL DUTY REVENUE COLLECTED
- APPAREL COMMON ERRORS
 - IPR
 - TARIFF CLASSIFICATION
 - DUTIABLE VALUE
 - TRADE AGREEMENT CLAIMS
 - CAFTA-DR AND NAFTA

ENFORCEMENT - APPAREL

- TEXTILE PRODUCTION VERIFICATION TEAM
- VISITS FOREIGN FACTORIES
 - DID THAT FACTORY MAKE IT?
 - IS THE FTA CLAIM VALID?
- 2017 VERIFICATIONS
 - 145 FACTORIES IN 10 COUNTRIES
 - 40% NON-COMPLIANCE RATE
- 6% OF CARGO EXAMS WERE DISCREPANT
- 50% OF LAB TESTS WERE DISCREPANT

ENFORCEMENT - FTA

- MANY FTAs, EACH WITH DIFFERENT RULES
 - TARIFF SHIFT VS. OTHER ORIGIN RULES
 - DIFFERENT DOCUMENTATION REQUIREMENTS
 - DIFFERENT POST-ENTRY CLAIMS, AND AUDITING
- 2017 COMMON FTAs
 - NAFTA MX \$250B
 - NAFTA CA \$220B
 - KORUS \$50B
 - GSP \$25B

ENFORCEMENT - NAFTA

- VERIFICATION OF A NAFTA CERTIFICATE EXECUTED BY A MANUFACTURER OR EXPORTER IN ANY NAFTA COUNTRY
- OFTEN A RELATED COMPANY
- MANUFACTURER OR EXPORTER FACES PENALTIES FOR ERRONEOUSLY EXECUTING A NAFTA CERTIFICATE, AND DAMAGES TO BUSINESS RELATIONSHIPS WHEN REPORT ERROR TO CUSTOMERS
- IMPORTER PAYS DUTIES OWED PLUS INTEREST, AND AVOIDS PENALTIES IF DOES SO PROMPTLY

ENFORCEMENT - NAFTA

- WHAT IS VERIFIED:
- WAS THE IMPORTED ARTICLE CORRECTLY CLASSIFIED?
- WAS THE APPLICABLE RULE SATISFIED
 - TARIFF SHIFT
 - RVC
 - DE MINIMIS?
- TRANS-SHIPMENT, FURTHER PROCESSING IN ANOTHER COUNTRY
- HAVE THE FACTS CHANGED SINCE THE ANALYSIS WAS DONE?

ENFORCEMENT - NAFTA

- NAFTA CERTIFICATE COMMON RED FLAGS:
- INADEQUATE DESCRIPTION, PART NUMBER ONLY
- INCORRECT CLASSIFICATION
- QUESTIONABLE PREFERENCE CRITERION
 - A = WHOLLY OBTAINED OR PRODUCED
- EXPIRED
- PRODUCER INFORMATION MISSING
- UNSIGNED, NOT DATED, OR SIGNED BY INAPPROPRIATE PERSON

ENFORCEMENT NAFTA

- NAFTA BEST PRACTICES:
- WRITTEN PROCEDURES
 - NOTIFICATION OF CHANGES IN SOURCING OR OPERATIONS
 - REVIEW AT LEAST ONCE PER YEAR
- TIMELY REPLY TO FORM 28 OR OTHER INQUIRIES
 - GET EXTENSION IF NEEDED
- CONSIDER THE INTERMEDIATE MATERIALS FOR CERTIFICATION
- DO YOU NEED A NAFTA CLAIM?

ENFORCEMENT - IPR

- COUNTRY – CHINA
- PRODUCTS
 - APPAREL, FOOTWEAR
 - CONSUMER ELECTRONIC
 - WATCHES, JEWELRY
 - PHARMACEUTICALS
 - COMPUTERS
 - TOYS

IPR Enforcement Coordination

- IPR Center
 - National Intellectual Property Rights Coordination Center
 - Coordinates IPR enforcement by US Federal agencies, Interpol, Europol, CA and MX
 - Has joint investigations with China, etc.
 - Led by ICE-HSI and CBP

IPR HISTORICAL PERSPECTIVE

- Pontius Pilate approach
 - A dispute between two private parties
 - Outside of the agency's expertise
 - Not essential to core responsibilities
- Congressional lobbying for more protection
 - Value of IPR – big bucks; Public health and safety
 - Customs is the only agency at the entry locations
 - Resulted in massive increase in IPR enforcement
- Current situation
 - Delays for importers and deferral to IPR owners

IPR RECORDATION WITH CUSTOMS

- Trademarks, tradenames and copyrights can be recorded with Customs.
- E-Recordation on the IPR module
- Requires a US Patent & Trademark Office registration number, or US Copyright Office registration number
- Fees for registration (\$190) and renewal (\$80)
- Cheap, easy, seen at all ports of entry

IPR OWNER DRIVEN

- Customs has a lot of discretion in IPR cases, including which statutes it applies, whether to allow remedial action or export, how much to mitigate penalties when petitions for relief are filed.
- Customs will defer to the IPR owner.
- The importer and owner may come to an arrangement and Customs will follow written instructions from the owner.
- Think of Customs as the owner's agent.

IPR SECTION 1526 PENALTIES

- For recorded, counterfeit trademarks and tradenames
- Civil fine for counterfeit marks in addition to seizure/forfeiture
 - First seizure – the domestic value of the merchandise if it had been genuine based upon MSRP at time of importation
 - Subsequent seizures – twice such value

IPR OTHER LIABILITIES

- Criminal, 18 USC 2320 (counterfeit)
 - Fines from \$2M-\$30M and imprisonment from 10 to 30 years depending upon the product and harm.
- 19 USC 1595a, “importations contrary to law”
 - Seizure of conveyance used in an importation contrary to law 1595a(a).
 - civil penalties equal to the value of the merchandise 1595a(b).
 - Additional seizure authority for the goods
 - Can be used for ITC order enforcement

IPR MORE (Lanham Act)

- 15 USC 1124
 - Imported goods bearing infringing marks or names forbidden
- 15 USC 1125
 - False, misleading words, marks
- Liquidated damages
 - Up to the size of the customs bond

POST-SEIZURE OPTIONS

- Abandon the property
- Request administrative forfeiture
- File a claim and cost bond for the case to be referred to US Attorney for court action.
- 19 USC 1618 petition for relief
- 19 USC 1617 Offer in Compromise
 - Reviewed by Chief Counsel, Allege litigation risks, Include payment
- Is there another option?

FORFEITED GOODS

- www.forfeiture.gov
- Destroyed
- If only the packaging is infringing may allow repacking (usually requires the consent of the IPR owner).
- Transferred to charity or government agency
- Sale at public auction after obliteration of the counterfeit mark
- Export (ex: gray mkt, owner's permission)

IPR Importer Best Practices

- Maintain a copy in the U.S., in English, of documented authorization for any IPR associated with imported goods.
- Inspect product samples before importation and use Customs' IPRS search program to check for any names or marks on the product.
- Identify the issue to foreign suppliers and obtain indemnification.

IPR Owner Best Practices

- Register with Customs your Trademarks and Copyrights.
 - IPR e-Recordation
- Develop a training guide for use by Customs
- Produce a Product ID Webinar for Customs
- Report suspect shipments
 - E-Allegations
- Update information with Customs

IPR Owner Best Practices

- E-Allegations to the IPR Center
 - Can be anonymous, but giving your name is better
 - Identify reason for suspecting IPR theft
 - Provide a photo or sample and explain the infringement in detail
 - Describe the financial loss, public health/safety
 - Country of origin and tariff classification
 - Mode of entry, names of carriers
 - Ports of entry, ports of export
 - Names of importing entities, manufacturers, distributors

From NAFTA To USMCA What Could Change?

NAFTA

- NAFTA was negotiated over several years, ratified in the U.S. in December, 1993.
- A permanent, tri-lateral treaty providing for:
 - Reduced duties for qualifying goods among the three countries
 - Agreement on investment, trade in services, and telecommunications
 - Government procurement procedures
 - Intellectual Property protection
- NAFTA was designed to keep manufacturing in North America.
- NAFTA has had many fans and many detractors since its inception.
 - Some believe NAFTA has contributed to a loss of manufacturing jobs

USMCA

- United States – Mexico – Canada Agreement
- Part of President Trump's promise to end NAFTA and replace it with something better.
- Signed by the leaders of the three countries on 11/30/2018.
- <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>
- Not yet ratified by U.S. Congress, and it may never be.

U.S. – Mexico – Canada Agreement

- Not exactly a complete replacement of NAFTA, more of a revision “NAFTA 2.0”.
 - USMCA is similar to more recent FTAs like CAFTA, U.S.-Chile, etc.
- In some ways, USMCA is more strict
 - Higher value content required for automobiles and parts
 - Increased protection of Intellectual Property
- In some ways, USMCA is more liberal
 - De minimis exception for non-originating content increases from 7% to 10%
 - Less strict requirements for Certificate of Origin
- Importer is the responsible party for origin, not the foreign producer / exporter.
- There are some subtle changes to Rules of Origin for some products
 - If USMCA is ratified and implemented, it would be advisable to review products previously qualified for NAFTA to ensure that they still comply.

USMCA Features

- Increased IPR Enforcement Authority
- Increased access to Canadian dairy products market for U.S. dairy producers
 - 3.6% Of dairy products sold in Canada can be from the United States.
- Duty Free Exemption for online purchases now \$100 (up From \$50 for Mexico and \$20 for Canada)
- Mexico upgrades Some Environmental And Labor Laws
- Copyright life increases 20 Years
 - 2 More Years Until Generic Pharmaceuticals
 - Removes Investor Suits against Governments (except some sectors in Mexico)
- NOT Permanent. USMCA sunsets in 16 Years, and is to be reviewed every 6 years.
- Increased Automotive Industry wages In Mexico (40-45% of a car must be made by workers making at least \$16/hour.)
- Required North American content in automobiles increases from 62.5 to 75%
 - 70% Of Mexican-made cars already satisfy new requirements

“Trade Wars”

Section 232 Duties

- Undertaken by the Secretary of Commerce, Authorized by Section 232 of the Trade Expansion Act of 1962
- Law allows for Commerce to evaluate the national security impact of trade
- The Department of Commerce found that the quantities and circumstances of steel and aluminum imports “threaten to impair the national security,” as defined by Section 232.
- President ordered the imposition of 25 percent additional tariffs on certain steel classifications, 10 percent on certain aluminum classifications.

Section 232 Duties (cont'd)

- Exemptions granted to Canada and Mexico, due to NAFTA and related negotiations. Other countries may be pursuing these.
- Exclusions may be granted for specific products in short supply, etc.
- Additional tariffs on fungible raw materials have driven up prices of such metals across the board (whether produced in the United States or abroad).

Section 301 Duties

- Undertaken by the U.S. Trade Representative, Authorized by Section 301 of the Trade Act of 1974
 - Law allows for USTR to identify unfair trade practices by other countries and make recommendations for trade actions to address these practices.
 - Applied only to China so far.
- Three separate lists have been issued, with Notice and Comment process. List of proposed targeted products (by tariff classification) were issued. Some modifications made to list in response to products.

Section 301 Duties (cont'd)

- Additional 25 percent duties assessed on many products. Additional 10 percent duties assessed on many more.
 - Ten percent duties slated to increase to 25 percent for 2019; currently on hold with ongoing negotiations.
- China retaliates by targeting U.S. products with similar additional tariffs.

Coping with Section 301 Duties

- Review of Section 301 and the Current Action against China
- Section 301 Duty Avoidance Strategies
 - Country Of Origin: Can you get the product from another country, or move production?
 - Classification / Tariff Engineering: Duties are assessed on particular HTS numbers.
 - Valuation: Lower value = lower duty assessment.
 - Ch. 98: U.S. goods returned and other things are exempt from Section 301.
 - Exemptions: Can apply for exemptions, but these are not being granted very often.
- Possible Exemptions

Section 301 Duties - Origin

- Only Goods of Chinese Origin are Impacted
- Substantial Transformation Test Determines Origin
 - Subjective
 - Product Specific Rulings And Cases
 - May Want To Get a Ruling
- Post-China Processing
 - Does Work in Another Country Substantially Transform The Chinese Goods Into a Good With a New Name, Character And Use?

Section 301 Duties – HTS Classification

- Section 301 duties are imposed by 8-digit HTS classification
- Review classifications to see if they are correct
 - Prior to Section 301 action, classifications may have been done with less care due to low or zero duty impact.
 - Correcting classification may remove a product from a Section 301 classification
- “Tariff Engineering”
 - Goods are classified based on condition as imported.
 - Altering a good purely for tariff purposes is acceptable.

Section 301 Duties – Value

- Section 301 duties are assessed ad valorem
- Customs value statute allows deductions
- First Sale Appraisalment?
- Deductions and Exclusions from Transaction Value
 - International Freight and Insurance
 - Post-Importation technical assistance and other work
 - Duties and Fees in the case of DDP Terms of Sale

Section 301 Duties – Chapter 98

- Goods entered under Chapter 98 provisions are exempt from Section 301 tariffs
 - U.S. goods returned
 - U.S. portion of goods assembled abroad
 - Special use provisions
 - Agricultural
 - Items for the disabled
 - Documentation required
 - Manufacturers' Affidavits, Foreign Shippers Declarations
 - Certificates of actual use

Section 301 Duties – Exemptions

- Some targeted classifications are very broad
- Can request exemption from USTR for specific products
 - Unavailable from non-Chinese sources
 - Severe economic harm to us interests
 - Customs can veto if too difficult to administer
- Deadline has passed for USTR lists 1 and 2
- No process yet for list 3 Exemptions

Best Practices

Best Practices for Importers

- Proper communication and planning are essential
- Integrate compliance plan into sourcing and purchasing operations
- Data from many parts of the company are needed (R&D, marketing, finance, etc.)
 - Changes to products, materials, sourcing should be communicated to compliance personnel.
- Companies should inform themselves on regulatory requirements of importing
- Consult with experts (Attorneys, Brokers, Consultants)

Best Practices for Importers (cont'd)

- Consider binding rulings or legal opinions on questionable issues
- Closely supervise import personnel, actions of brokers
- Implement standard procedures and internal controls to check performance
 - Mechanisms designed to detect, correct, and prevent errors
 - With records of activities performed and actions taken
- Post-activity internal audits are key

Know Your Business

- Importer's complete import activity is available:
 - From CBP via FOIA
 - From CBP via Internet (ACE Portal)
 - From Customs Brokers (Quality and detail level varies among brokers.)
- Entry Line Level Data are Useful:
 - Internal audits or reviews
 - Risk assessment
 - Prior Disclosures
 - Analysis for business purposes
 - Identify duty savings opportunities
 - Identify importer identity theft
 - Identify potential issues with mergers and acquisitions

Personal Liability

- 1592 Personal Liability, “no person may ... aid or abet”
- Trek Leather (CAFC 2014)
- President liable under 1592 for unreported assists
 - He communicated the erroneous info
- Customs not required to pierce the corporate veil
- Intl Trading Services (CIT 2017)
- CEO liable for mis-classified sugar

Questions ???