

## Training the Entry Writer: Part Two

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Barnes, Richardson & Colburn  
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## Customs Broker/Importer Relationship

### Customs Broker is the Agent of the Importer

- How should the Broker plan?
- Could the Broker be liable for errors of the entry writer?
- Should the Broker be required to educate the Importer?
- Should these issues be made clear between the Broker and the Importer?
- Contract with importer limiting liability.

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## Responsibilities of the Customs Broker

### Customs Broker as Agent of the Importer

- Mod Act: Duty of importer, whether or not through an agent, to exercise reasonable care in the classification, valuation and entry of merchandise.
- Customs Broker Designated by Power of Attorney.
- Duty to advise client of errors or omissions.
- Confidentiality of Importer Records.
- Recordkeeping

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## Responsibilities of the Customs Broker

### Customs Broker as Licensee of the Government

- Duty to exercise responsible supervision and control
- Duty to exercise due diligence.
  - Notification regarding the payment of duties.
  - Handling of Customs Duties.
- Duty to avoid knowingly submitting false information.
- Recordkeeping.

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## Legal Considerations

Customs Penalties that could be applied to a Broker:

- A. Sec. 1592
- B. Sec. 1595a
- C. Sec. 1641(d)

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## CF 7501

Customs Broker Makes  
A Declaration As To The  
Accuracy Of The Entry  
Information

A sample of a customs form, CF 7501, is shown. The form is a grid with various fields for entry information. A red arrow points from the text on the left to a specific section of the form, likely the declaration section.

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### 7501 Certification

**38. DECLARATION OF IMPORTER OF RECORD (OWNER OR PURCHASER) OR AUTHORIZED AGENT**

I declare that I am the  importer of record and that the actual owner, purchaser, or consignee for CBP purposes is as shown above, OR  owner or purchaser or agent thereof. I further declare that the merchandise  was obtained pursuant to a purchase or agreement to purchase and that the prices set forth in the invoices are true, OR  was not obtained pursuant to a purchase or agreement to purchase and the statements in the invoices as to value or price are true to the best of my knowledge and belief. I also declare that the statements in the documents herein filed by me declare to the best of my knowledge and belief the true prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties and are true and correct, and that all goods or services provided to the holder of the merchandise either free or at reduced cost are fully disclosed. I will immediately furnish to the appropriate CBP officer any information showing a different statement of facts.

41. DECLARANT NAME                      TITLE                      SIGNATURE                      DATE

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### Importer of Record

- Does the Customer Qualify as the Importer of Record?
  - Owner
  - Purchaser
  - Ultimate Consignee

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### Valuation

- Is the merchandise imported pursuant to a consignment or transaction other than a sale for export to the U.S. At the invoiced unit price? If so, how was the value determined?
- Does the invoice price cover all amounts paid or payable to the vendor in connection with the purchase of this merchandise? If not, what other payments are involved?

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### Valuation

Following importation, did any of the following events occur?

- A. Re-negotiation of price paid or payable to the seller?
- B. A sharing with the supplier in the re-sale price or re-sale profits?
- C. Payments to the foreign seller for currency fluctuations?

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### Valuation

- Payment for contractual shortfall or liquidated damages for failure to perform on contract?
- The direct or indirect payment of any kind by importer to the foreign supplier that is different from the involved unit price presented to Customs.

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### Valuation

- Has your supplier been previously provided with anything of value that could have reduced the invoice unit price, such as, down payments, credits from previous shipments, or the like that are not shown on the commercial invoice presented to Customs?
- Does the invoice unit price include all packing costs?

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### Valuation

- Are any commissions paid or payable in connection with the purchase of the merchandise that are not already included in the invoice unit price?
  
- Are any rebates involved in the import transaction?

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### Valuation

- Was any royalty or license fee paid to the foreign supplier or any other person, wherever located, in connection with (a) the production of the merchandise in the foreign country, (b) the exportation of the product to the United States, (c) the importation of the product into the United States, (d) the re-sale of the imported product or (e) sale of products made from the imported product?

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### Valuation

- Did you, or if applicable, your customer in the United States, provide free of charge or at a reduced cost to the foreign manufacturer or exporter any of the following "assists":
  - a. Materials, components, parts and similar items incorporated in the imported merchandise?
  - b. Tools, dies, molds, manufacturing equipment and similar items used in the production of the imported merchandise?

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### Valuation

- Merchandise consumed in the production of the imported merchandise?
- Engineering, development, artwork, design work and plans and sketches that were undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise?
- If the answer to "a" through "d" is in the affirmative, is there a reasonable means by which this cost can be allocated over a period of time?

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### Valuation

- Has Customs ever required that you report the value of identical or similar merchandise imported in the United States on other transactions?
- Has Customs ever required that you provide to Customs foreign manufacturing cost information or cost relating to the re-sale of this merchandise in the United States?

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### Valuation

- Is the importer related to the seller?  
  
(Related is defined as members of the same family, two businesses having a common officer or director, partners, employer and employee, and any person directly or indirectly owning, controlling or holding with power to vote, 5% or more of the outstanding voting stock or shares of any organization or two or more persons directly or indirectly controlled by or under common control with any person.) If so, see Federal Register notice attached to handouts.

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### Valuation

The following questions, if answered in the affirmative, may indicate that the valuation of your client's product could be lawfully reduced:

- A. Is the foreign supplier actually a "middle man" who buys from a local producer and resells?
- B. Does the purchase price include extended payment interest that could be the subject of a separate agreement?

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### Valuation

- Does the customs value include foreign inland freight, even though the sale is ex-factory?
- Are you not allocating declared assists or cash payments for depreciable assets as permitted?
- Does the purchase price include any installation services performed in the United States?
- Does the purchase price include any quota charges ultimately paid to a third party?

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### ASSUMING THE IMPORTER IS DELEGATING CLASSIFICATION TO YOU AS CUSTOMS BROKER

- -- Are you sufficiently familiar with the merchandise to classify it?
  - A. Is the invoice description adequate?
  - B. Is a sample available?
  - C. Are informational brochures, advertising materials, specifications, schematics, chemical formulas available?

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### Classification

- -- Has the importer previously imported this merchandise or similar merchandise?
  - A. With another broker?
  - B. Through another port?
  - C. Has the importer ever received a ruling?
  - D. Has the importer ever received a CF 28 or CF 29?
  - E. Has the importer received a summons regarding classification or been subject to an audit?

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### Classification

- How will the merchandise be used? Is this type of merchandise used uniformly throughout the country? In different industries?
- What is the origin of the merchandise?
- Where will the merchandise be consumed?
- How was the merchandise produced?

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### Classification

- -- Are you familiar with the precedent regarding the classification of this type of merchandise?
  - Rulings
  - Court decisions

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### Classification

- Have you properly examined the HTSUS?
  - Have you examined the word index?
  - Have you identified all possibly applicable chapters?
  - Have you considered all relevant Chapter and Section Notes?
  - Have you examined the Explanatory Notes?

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### Classification

- Have you correctly determined the most specific provision?
- If a use provision is involved, have you properly identified what type of use provision, e.g. principal or actual?

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### Classification

- Is the merchandise incomplete or unfinished?
- Unassembled or disassembled?
- A mixture or combination?
- A set put up for retail sale?

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### AD & CVD

- Flagged?
- Are you familiar with outstanding orders?
- Nightmare scenarios

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### FTA's and Origin

- NAFTA, etc.
- GSP
- Country of Origin Marking

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### Binding Ruling Request

- Where should the ruling request be submitted?
- What is the result sought?
- What support exists for the position?
  - The language of competing tariff provisions.
  - Interpretations of provisions contained in Customs Rulings.
  - Court opinions.

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### Binding Ruling Request

- Communication with NIS or ORR?
- The effect of a poorly drafted ruling request.
- Non-classification rulings.

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### Internal Advice Requests

- Import Specialist seeks guidance.
  - Who submits?
  - Who decides?
  - Can importer make a submission?
  - What is the effect of decision?
  - How long does it take to receive a decision?

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### Challenging Customs Decisions

- Protests: The primary and preferred means
- First legal pleading.
  - What is the source of the disagreement?
  - What is the decision to be protested?
  - When was that decision made?
  - How many entries are affected?
  - Can protests be filed in a timely manner?
  - 180 days.

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### Challenging Customs Decisions

- Has the protest form been completed with all required information?
- Has the "case supporting the protest been made?
- Has all supporting documentation or information been included?

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### Challenging Customs Decisions

- Applications for Further Review
- Is the local port in a position to be able to approve the protest?
  - Prior adverse rulings.
  - Conflicting rulings.
  - Significant new issue.
- Reviewed by Attorneys at ORR.
- Has legal argument been presented?

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### Challenging Customs Decisions

- Have "Criteria for Further Review" been met?
  - Inconsistent with prior decision.
  - New questions of law or fact.
  - Involves matters previously ruled upon but contains new facts or legal arguments.

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### Challenging Customs Decisions

- When protests are denied – litigation.
- Summons must be filed.
- What is the effect of the summons?
- Where is the summons filed?
- Who may file the summons?

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### Challenging Customs Decisions

- Often overlooked opportunities
  - Temporary duty suspension legislation.
  - WTO.
  - Government to government negotiations regarding differing interpretations of the HTSUS.

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### Civil Penalties – 19 U.S.C. 1592

- Material omissions or false statements.
- Negligence.
- Gross negligence.
- Fraud.

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### Civil Penalties – 19 U.S.C. 1592

- Typical penalty scenarios.
- Mitigation.
- Prior disclosure.

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### Liquidated Damages

- Breach of bond.
- Bond terms.
- Agreement to make redelivery.
- Calculation of amount of demand.
- Mitigation.
- No prior disclosure.

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### Training the Entry Writer: Part One

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