



302:Dealing with U.S. Customs—The Basic Requirements

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Faculty Biographies

Lynne M. Durbin

Lynne M. Durbin is general counsel and secretary for Adhesives Research, Inc. in Glen Rock, Pennsylvania. Her responsibilities include providing legal counsel to the domestic and international operations of the adhesives manufacturing company and its sister organizations, which are involved in printing and manufacturing conductive membranes. She also manages intellectual property matters, assists in the development of business strategies, and manages litigation.

Prior to joining Adhesives Research, Inc., Ms. Durbin served as division counsel and director of environment, health and safety for the Grace Davison unit of W.R. Grace & Co.-Conn. While at Grace, she provided counsel on general corporate and commercial matters, environmental health and safety issues, intellectual property matters, antitrust matters and acquisitions, as well as managing the environmental health, and safety department for an international multi-location inorganic chemical manufacturer.

Ms. Durbin is currently president-elect of ACCA's Baltimore Chapter, vice president of Network 2000, Inc., and a director of the Baltimore Girl Scouts and the Parks & People Foundation. Ms. Durbin was named to *The Daily Record's* list of Maryland's Top 100 Women in 2000 and 2002.

Ms. Durbin received a BA from Yale University and a JD from the Boston University School of Law.

Maureen M. Morrissey

Maureen M. Morrissey is the assistant general counsel, the Americas for Tupperware Corporation located in Orlando. Her responsibilities include providing legal counsel to the United States and Canadian organizations, oversight and implementation of legal strategies and litigation in Mexico, Central America, South America, and the Caribbean Basin, and serving as the global advisor on product safety issues and compliance.

Prior to joining Tupperware Corporation, Ms. Morrissey was engaged in private practice in Atlanta, specializing in federal tax matters, mergers and acquisitions, leveraged buyouts, and IPOs.

Ms. Morrissey currently serves as legal advisor to Orlando Regional Corporate Volunteer Council, Inc., a non-profit organization. Ms. Morrissey also serves as vice chair for Tupperware Corporation's volunteer council and is a member and past chair of the steering committee for Tupperware's Heart of Florida United Way campaign efforts.

Ms. Morrissey received a BA from the University of South Florida, a JD from Cumberland School of Law of Samford University, and an LLM in taxation from Emory University.

Todd H. Silberman

Todd H. Silberman is vice president and general counsel for Express Carriers, an international trucking company, located in San Antonio. His responsibilities include advising directors, managers, and operating areas in corporate decisions and issues, corporate governance and drafting of company minutes, strategic planning, institution of preventative measures, monitoring the activities of the company, management and handling of cases in all stages of litigation, risk management including the handling of claims and settlements, supervise, support, coordinate and manage outside counsel, review, drafting and negotiation of corporate contracts, labor and employment law, transportation law, customs issues, agency law, real estate transactions, acquisitions, internal auditing, formation of subsidiaries and additional companies, and drafting and probating of wills and trusts.

Prior to that, Mr. Silberman had an office in which he was a general practitioner. His practice focused on the areas of family law, business, wills and trusts, real estate, and insurance defense litigation.

Currently he serves as vice chair for ACCA's Small Law Department Committee and as immediate past president of ACCA's South/Central Texas Chapter. He has spoken at St. Mary's Law School as well as the University of Texas School of law about practicing law in-house. Additionally, he is a vice president and on the board of directors at Jewish Family and Children's Services and has also volunteered at the Children's Bereavement Center and as a mentor to at-risk youth.

Mr. Silberman received a BA from the University of Florida and is a graduate of South Texas College of Law.

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Basic Export Control Requirements

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This outline is intended to give an overview of the issues a company should consider when exporting from the United States. The information contained herein is up to date through August 11th, 2003.

I. My company is planning to export from the United States. Are there any laws or regulations of which I should be aware?

A. Four Primary Regulatory Agencies.

Yes. The four government agencies with the primary oversight and control of exports from the United States are the Departments of Commerce, Treasury, Energy and State. They regulate exports for purposes of national security, foreign policy, non-proliferation of weapons and anti-terrorism.

- Commerce - through the Bureau of Industry and Security (“BIS”), is the primary licensing agency, using the Export Administration Regulations (“EAR”) (15 C.F.R. Chapter VII, subchapter C) and the Commerce Control List (“CCL”) (15 C.F.R. Chapter VII, part 774, supp. 1, 2 and 3) to regulate the export and re-export of items that have commercial uses but also have possible military applications.
- Treasury - through the Office of Foreign Asset Control (“OFAC”), administers economic and trade sanctions (31 C.F.R. Chapter V).
- State – primarily through the Directorate of Defense Trade Controls (“DDTC”), controls the export of defense/military articles and related technologies covered by the U.S. Munitions List (“USML”) (22 C.F.R. part 121) and under the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. parts 120-130) and the Arms Export Control Act (“AECA”) (22 U.S.C. 2778-2780).
- Energy – primarily through the Nuclear Regulatory Commission (“NRC”) and the National Nuclear Security Administration (“NNSA”), controls the export of nuclear technology and technical data for nuclear weapons (10 C.F.R. part 810).

- Several other agencies have limited export responsibilities, such as the Drug Enforcement Administration, Food and Drug Administration, Department of Interior and Federal Maritime Commission.

B. Export Definition.

All of these agencies regulate “exports”, which are:

- Any (i) shipment or transfer (ii) that leaves the country (iii) of goods (commodities), software, or technology.
 - A shipment of goods does not need to be for remuneration in order for the rules to apply.
 - Hand carries of goods also qualify as shipments.
 - Releases of technology can occur by faxes, e-mail, telephone, EDI, or seminars, lectures and courses. They can also occur by exposure of technology to foreign nationals in your company’s employ who do not have permanent resident status in the United States.

The BIS also regulates re-exports of such items as:

- U.S. origin items wherever located; U.S. origin parts, components and materials; U.S. origin software or technology commingled with foreign software or technology; certain foreign made “direct products” of U.S. origin technology or software. (*De minimis* re-export permitted where cost of U.S. commodities is less than 10-25% of value of final product. Percentage depends on destination country.) Re-exports can occur through sales by a company’s foreign subsidiaries or affiliates and through customers reselling or transshipping a company’s goods.

C. Other Laws.

There are other laws relating to exports which your company should consider, including;

- North American Free Trade Agreement
- The Foreign Corrupt Practices Act
- Anti-boycott regulations
- Toxic Substances Control Act (and similar foreign laws relating to chemicals which may be shipped into other countries)

These are outside the scope of this program.

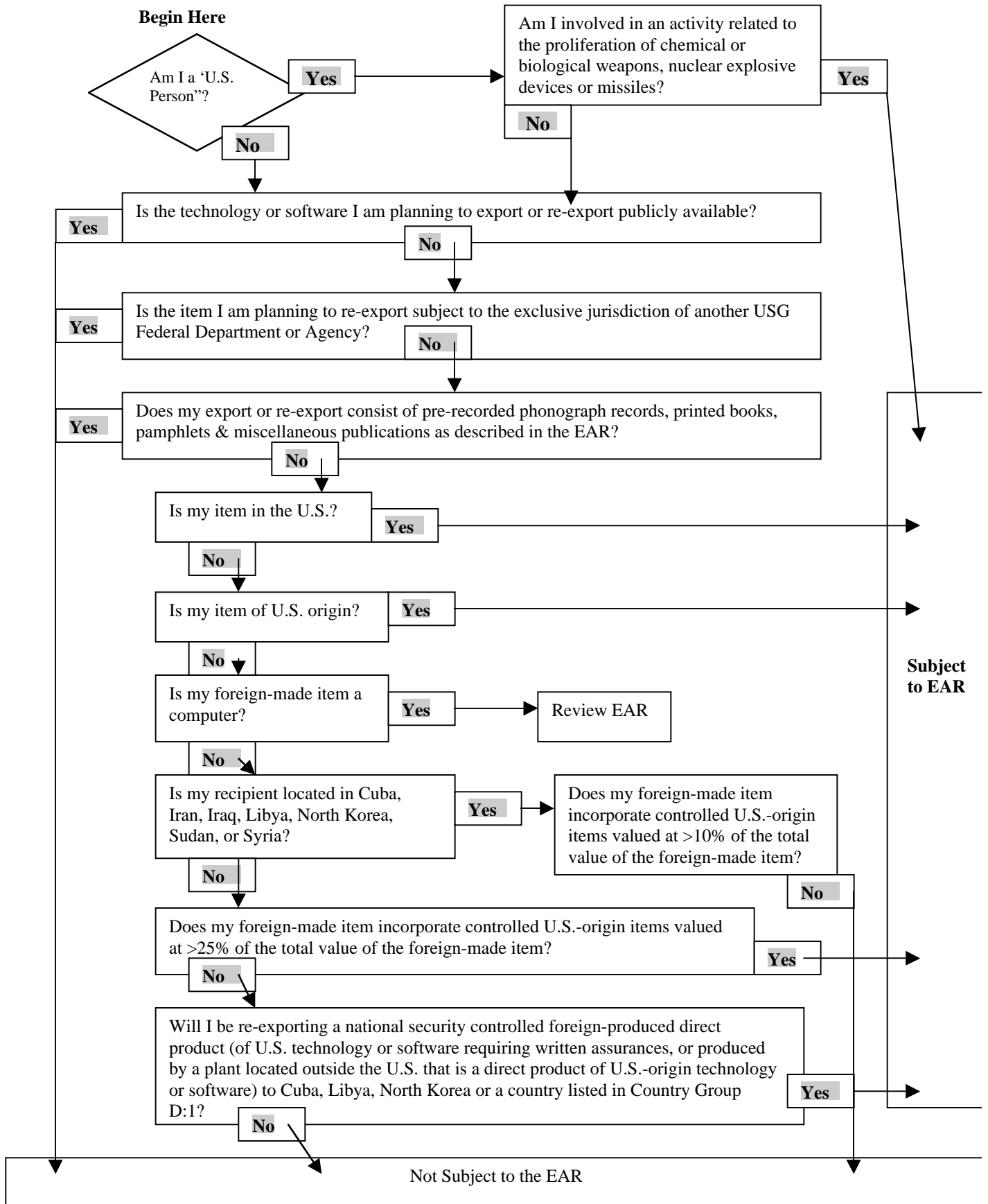
II. How should my company comply?

A. Classification of Exports.

The primary step in navigating the export regulatory scheme is to determine which agency controls so that your company may determine if an export license is required. To determine the appropriate classification, examine your company's products and compare them to the agency's control list. If classification is not apparent, obtain written classification from the agency. (Commerce (BIS) 202-482-4811, Defense Trade Controls – 703-875-6644). This can take up to a year, so it is necessary to plan ahead.

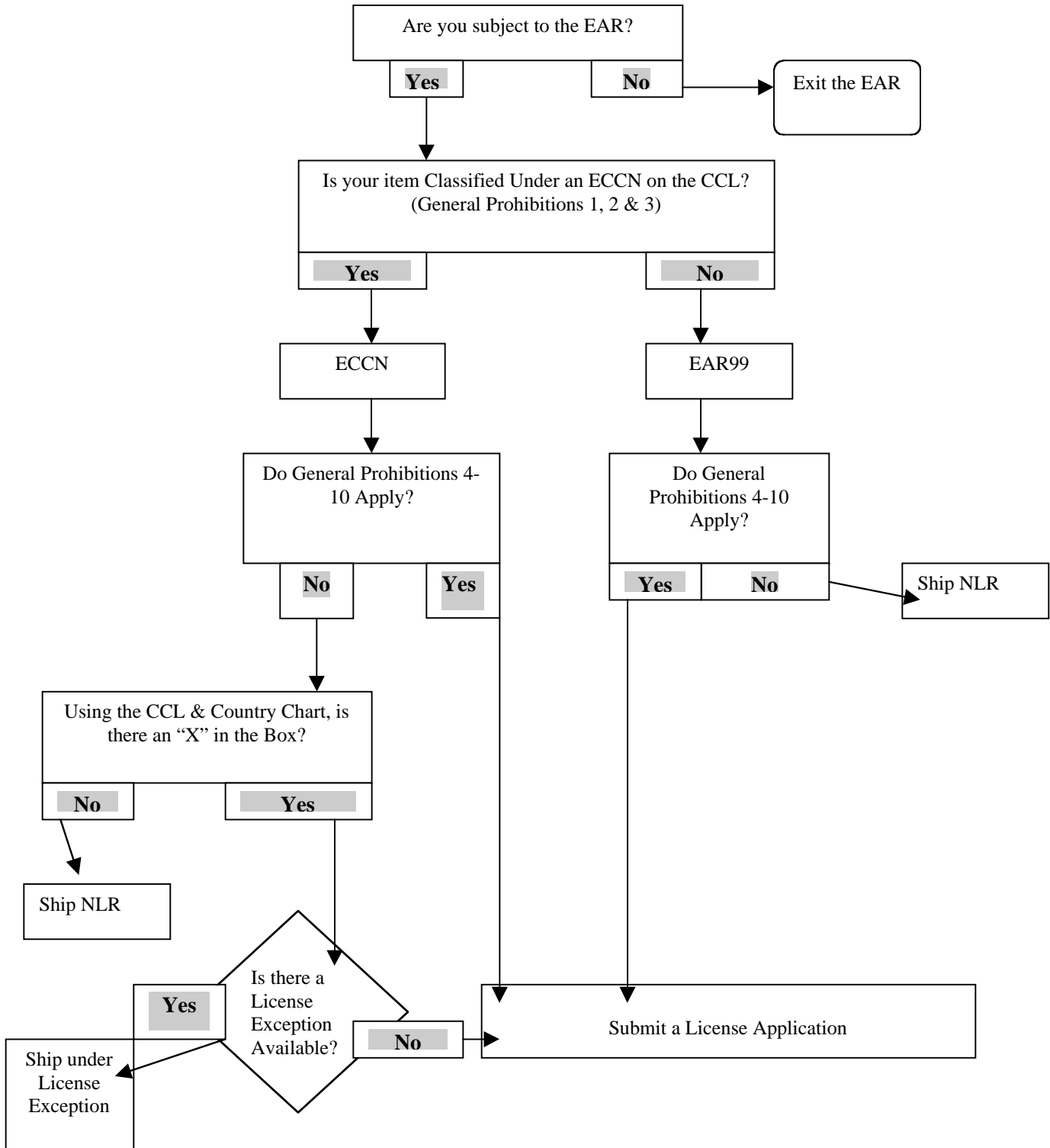
- The majority of items are controlled by Commerce's BIS, so your company should first consult the EAR decision tree located at 15 C.F.R. Chapter VII, part 732, supp. 2 and reproduced on the following page:

Am I Subject to the EAR?



- If your company's goods are subject to the EAR (and most are), then determine if your company needs a license by referring to the decision tree at 15 C.F.R. Chapter VII, part 732, supp. 1 and reproduced on the following page:

Decision Tree



- Your company's goods will either fall into the EAR 99 classification which generally does not require a license ("NLR" or no license required) or under an Export Control Classification Number ("ECCN"), which will require your company to (i) examine the category into which the items fall under the CCL and to (ii) review restrictions by country on such items.
- The Commerce Control List ("CCL") categories are.
 - 0 - Nuclear, Material, Facilities and Equipment
 - 1 - Materials, Chemicals, Micro-organisms, Toxins
 - 2 - Materials Processing
 - 3 - Electronics
 - 4 - Computers
 - 5 - Telecommunications and Information Security
 - 6 - Sensors and Lasers
 - 7 - Navigation and Avionics
 - 8 - Marine
 - 9 - Propulsion Systems, Space Vehicles
- If your company determines a license is required, licensing may still be avoided if the item falls into one of the license exceptions under 15 C.F.R. Chapter VII, part 740. These exceptions include, but are not limited to, limited value shipments; civil end-users; temporary imports or exports; service and replacement; baggage; technology and software under restriction; computers; aircraft and vessels; and additional permissive re-exports.
- These exceptions will not remove the need for a license if there are other prohibitions on export, such as sanctions or embargoes.
- For defense and nuclear items, consult the DDTC regulations, the USML, NRC and NNSA regulations noted above. If your company deals in these items, there are many foreign countries/entities that will need to be screened. If your company exports items on the USML, it will not only need a license, but will need to register with the DDTC. See also the additional information on the agencies' websites at www.pmdtc.org (DDTC), www.nrc.gov (NRC) and www.nnsa.doe.gov.

B. Determine if Your Company May Ship to this Person or Entity.

Even though your export item may fall under EAR 99, an exemption or under another agency's licensing jurisdiction, your company must still determine if it can export to the specific party/entity with whom the company wishes to do business.

- BIS maintains two lists of parties/entities to whom exports are either absolutely prohibited or for whom a special license is required.
 - The Denied Persons List (DPL), which contains names of persons who have been issued a denial order by BIS. The list can be located at www.bxa.doc.gov.
 - The Entities List, which comprises foreign end users engaged in proliferation activities. The list can be located at www.bxa.doc.gov.
- Treasury – through OFAC, maintains the Specially Designated Nationals List (“SDNL”), which contains entities and individuals that are blocked pursuant to various sanctions programs. U.S. persons may not deal with these entities/individuals and must block any property in the U.S. persons’ control in which an SDN has an interest. The list can be located at www.treas.gov/ofac.com.
- The Department of State maintains the Debarred Parties’ List, which lists individuals denied export privileges under the International Traffic in Arms Regulations (“ITAR”). The list can be located at www.pmdtc.org.
- In reviewing these lists, your company should remember that entities involved in servicing the transaction, such as shipping lines, freight forwarders, agents, insurers and banks, may be on one of these lists. Even though the end customer may not be on a list, dealing with one of these parties may cause the transaction to need a license or be prohibited.

C. Determine if Your Company May Ship to this Country.

OFAC enforces economic sanctions against countries and groups of individuals based on foreign policy and national security issues. Some of the sanctions are selective and others are comprehensive. Some encompass only U.S. activities by U.S. located persons and entities, and others broadly define U.S. persons to sweep in foreign subsidiaries and affiliates, and related transactions.

If a transaction with one of the sanctioned countries is not entirely blocked, a license will almost always be required. **Sanction language should be examined carefully to determine if your company’s transaction may proceed.**

The OFAC website, at www.treas.gov/ofac.com has a listing of frequently asked questions, the latest list of sanctioned countries and entities (and the details of the sanctions) and an extremely useful publication, Foreign Assets Control Regulations for Exporters and Importers, which is downloadable with Adobe Acrobat.

- The countries under sanctions as of July 30, 2003 were:

Burma	North Korea
Cuba	Sudan
Iran	Syria
Iraq	The Balkans
Liberia	Zimbabwe

- There are also sanctions for:

The Diamond Trade
Narcotics
Terrorism
Weapons of Mass Destruction

III. Where Should my Company Report Transactions that it Believes are in Violation of these Regulations?

A. Reporting Mechanism. Each agency has a different reporting mechanism.

- For possible violations of the EAR, contact BIS at the Office of Export Enforcement nearest you or submit an e-mail tip form. The addresses and forms are available at www.bxa.doc.gov/enforcement/report.htm.
- For possible violations of sanctions administered by OFAC, call the OFAC hotline at 1-800-540-6322. Also review OFAC's FAQ's and other website guidance. There may be limited amnesty available for disclosures of past violations.
- For violations under DDTC regulations, file a written disclosure in accordance with 22 C.F.R. part 127.12. Limited amnesty may also be available here.
- For violations relating to nuclear technology, review the regulations cited at www.nrc.gov and www.nnsa.doe.gov.

B. Penalties.

The penalties for violations of these regulations can be severe.

- Violations of EAR
 - Criminal "willful" violations may lead to corporate fines up to the greater of \$1,000,000 or five times the value of exports for each violation, and individual fines up to \$250,000 or imprisonment up to ten years or both. Lesser penalties apply for criminal "knowing" violations.

- Administrative penalties range from denial of export privileges to fines ranging from \$12,000 to \$120,000 per violations.
- Violations of OFAC sanctions vary based on the program involved. Criminal penalties range from \$50,000 to \$10,000,000 with possible imprisonment up to thirty years for willful violations. Civil penalties range from \$11,000 to \$1,000,000 for each violation.
- DDTC has civil penalties of up to \$500,000 per violation and up to five years in jail. Criminal penalties range up to \$1,000,000 per violation and up to ten years in jail. In addition, violators may be debarred for a period of time from obtaining an export license and, possibly, from receiving any U.S. government contracts.
- The NRC and NNSA have similar harsh penalty regimes.

IV. **Should my Company have a Compliance Program and What Should it Contain?**

A. Benefits of Compliance Program.

Your company should have a compliance program to set forth the respective duties and obligations of each level of management and of employees with respect to export compliance. Not only will this give assurance of consistency of practice throughout a large company and over an extended period of time, but it will also be a mitigating factor in the sentencing process under The Federal Corporate Sentencing Guidelines of 1991, should that become an issue.

Initially creating a compliance program and manual can appear to be a daunting task, but many consultants and trade groups can provide boilerplate documents to use as a starting point. Keys to a successful program are simplicity and flexibility for when the rules changes. Once your company has worked through how it will deal with these issues, it will pay off in future years when the company will not need to “recreate the wheel” or engage in finger pointing when employees do not understand their responsibilities.

B. Elements of a Compliance Program.

- Company policy/management statement; *i.e.*, we will obey all export regulations.
- Identify positions responsible for various elements of compliance, including screening, classifying, licensing, filling out and filing licensing documents, record-keeping and retention, training and auditing.
- Distribution and verification of regulatory changes (see note).
- Product classification (see note).

- Screening denied parties/debarred parties/specially designated nationals (see note).

(Note: Consider including BIS' red-flag indicator list for the preceding three points. The list gives guidance on key facts which might be indicative of transactions with inappropriate end use, end-user or destination. A copy is attached at the end of this outline.)

- Weapons proliferation screening.
- Country screening.
- Drop ship procedures.
- Technical data transfer procedures.
- Antiboycott compliance.
- Licensing.
- Education and training.
- Compliance systems review/audit.
- Record keeping (at least five years).
- Notification of suspected violations (both internally and externally).
- Dealing with third party logistics/freight forwarders.

V. Resources

A. Government Websites.

The government websites have become increasingly user-friendly over the years. The Commerce and Treasury sites, particularly, are written and navigable in a way that your export and/or shipping department personnel should be able to find guidance.

- Commerce - BIS website, www.bxa.doc.gov.
- Treasury - OFAC website, www.treas.gov/ofac.
- State – DDTC website, www.pmdtc.org.
- Energy – NRC website, www.nrc.gov and NNSA website, www.nnsa.doe.gov.

B. Government Publications.

Department of Treasury, Foreign Assets Control Regulations for Importers and Exporters (available on website).

C. Articles.

“Implementing Internal Control Programs”, Neil R. Trenchard, Corporate Counsel’s Quarterly, April 2002, Volume 18, Number 2.

D. Regulations.

- Commerce - BIS regulations, 15 C.F.R. Chapter VII.
- Treasury – OFAC regulations, 31 C.F.R. Chapter V.
- State – ITAR regulations, 22 C.F.R. parts 120-130 and (C.F.R. sections available on State website) and AECA, 22 U.S.C. 2778-2780
- Energy - 10 C.F.R. part 810.

ATTACHMENT**BIS RED FLAGS**

- ✓ The customer or its address is similar to one of the parties found on the Commerce Department's (BIS') list of denied persons.
- ✓ The customer or purchasing agent is reluctant to offer information about the end-use of the item.
- ✓ The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
- ✓ The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- ✓ The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- ✓ The customer has little or no business background.
- ✓ The customer is unfamiliar with the product's performance characteristics but still wants the product.
- ✓ Routine installation, training, or maintenance services are declined by the customer.
- ✓ Delivery dates are vague, or deliveries are planned for out of the way destinations.
- ✓ A freight forwarding firm is listed as the product's final destination.
- ✓ The shipping route is abnormal for the product and destination.
- ✓ Packaging is inconsistent with the stated method of shipment or destination.
- ✓ When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.

FAQs About Exporting from the United States

Lynne M. Durbin
General Counsel and Secretary
Adhesives Research, Inc.

What Issues Should be Considered Before Exporting From the United States?

- Commerce—Bureau of Industry and Security (BIS) regulations of possible dual commercial/military use items.
- State—Directorate of Defense Trade Controls (DDTC) regulations of defense/military articles and related technologies.

What Issues Should Be Considered Before Exporting Goods from the United States?

- Treasury—Office of Foreign Asset Control (OFAC) economic and trade sanctions.
- Energy—Nuclear Regulatory Commission (NRC) and National Nuclear Security Administration (NNSA) regulations governing nuclear technology and technical data for nuclear weapons.

What Issues Should Be Considered Before Exporting Goods from the United States?

- Regulations of other agencies with limited export jurisdiction
- NAFTA
- The Foreign Corrupt Practices Act
- Anti-boycott Regulations
- Toxic Substances Control Act

What Is An Export?

- Any shipment or transfer of goods, software or technology that leaves the country.
 - Includes:
 - No charge shipments
 - Hand carries of goods
 - Releases of technology via faxes, e-mail, etc. and access to technology by certain non-U.S. persons (including some foreign employees)
- All of these may be re-exported as well.

Does My Company Need a License to Export?

- First, classify export items and compare them to an agency's control list. This will determine which agency controls.
- Second, review agency regulations to see if export may be made without a license, if a license is necessary, or if an exception is available.

Does My Company Need a License to Export?

- Third, determine whether, even with license or exception, export may be made to person or entity that is buyer. Review Denied Parties List, Entities List, Specially Designated Nationals List and Debarred Parties List.

Does My Company Need a License to Export?

- Fourth, determine if export may be made to this country by reviewing sanctioned and embargoed countries regulations.
- As of July 30, 2004, sanctioned countries on OFAC list included: Burma, Cuba, Iran, Iraq, Liberia, North Korea, Sudan, Syria, the Balkans and Zimbabwe.

How Should A Possible Violation Be Reported?

- Each agency has either a hotline or a written disclosure mechanism or both. See the various agency websites for details.
- Penalties for violations can be severe, ranging from hundreds of thousands to millions of dollars, up to ten years of jail time, denial of export privileges and debarment from government contracts.

What Are the Elements of an Effective Compliance Program?

- Company policy/management statement.
- Identification of positions responsible for various export duties.
- Distribution and verification of regulatory changes.
- Product classification.
- Screening of parties to transaction.
- Country screening.
- Weapons proliferation screening.
- Drop ship procedures.
- Anti-boycott compliance.

What Are the Elements of an Effective Compliance Program?

- Technical data transfer procedures.
- Licensing.
- Education and training.
- Compliance systems review and audit.
- Record keeping (at least 5 years).
- Notification of suspected violations.
- Dealing with third party logistics/freight forwarders.

IMPORTING GOODS INTO THE UNITED STATES

A BASIC GUIDE

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TUPPERWARE CORPORATION

INTRODUCTION

This outline is intended to provide an overview of the importing process and contains general information regarding import requirements. Depending on the specific nature of your business, the facts and circumstances surrounding every import transaction will differ. For example, the nature of the imported article, its country of origin, and the value of the articles you are seeking to import will each have an effect upon the method and process for clearing such articles through U.S. Customs for entry into the United States.

Under the Customs Modernization Act which was enacted in December 1993 as Title VI of the North American Free Trade Agreement, importers have the legal responsibility for declaring the value, classification and rate of duty for merchandise being imported into the United States.

A. Definition of Informed Compliance. A central characteristic of the relationship between U.S. Customs and Importers under the Customs Modernization Act is the concept of "informed compliance."

- Informed compliance operates to create a shared responsibility between Customs and the importer community.
- Under this shared responsibility concept, Customs is charged with effectively communicating its requirements to the importer community. Similarly, members of the importer community bear the responsibility of exercising "reasonable care" in conducting their regulated activities in accordance with U.S. laws and regulations.

B. What Constitutes "Reasonable Care"? In the Customs Service publication, *Importing into the United States, A Guide for Commercial Importers*, importers are encouraged to examine a list of questions which suggest methods for avoiding compliance problems and for meeting the obligation to exercise reasonable care. The Guide divides the questions into general questions applicable to all import transactions and into questions arranged by topic. Topical questions include: merchandise description and tariff classification; valuation; country of origin/marketing/quota; intellectual property rights; miscellaneous; and additional questions for textile and apparel importers.

I. **IMPORT REQUIREMENTS – GENERALLY**

A. The Importer of Record. The importer of record for any importation of merchandise may be the owner, purchaser, or licensed customs broker designated by the owner, purchaser or consignee. Imported goods are not considered to be legally entered into the United States until after the following have occurred:

- The shipment of merchandise has arrived within the port of entry;
- Delivery of the merchandise has been authorized by Customs; and
- Estimated duties have been paid.

The importer of record is responsible for accomplishing each of the above processes with respect to the importation of merchandise. The importation process begins with the arrival of goods at the port where the process of “entry” will be undertaken.

B. Arrival of Goods. Generally, the carrier transporting the merchandise to designated port of entry notifies the importer of record that the shipment has arrived. Customs assumes no responsibility for notification of the arrival of merchandise at the port of entry.

C. Entry of Goods. For Customs purposes, “entry” is not merely the arrival of goods at a port, but instead refers to the process of presenting documentation for clearing goods through Customs.

1. Requirement that goods be “entered.” Customs regulations require that some form of “entry” of goods be made at the first port of arrival in the United States. Generally, entry will be made at the first port of arrival for one of the following purposes:

- For consumption (i.e., goods going directly into the commerce of the United States without any time or use restrictions placed on such goods);
- For entry into a bonded warehouse; or
- For transportation “in bond” to another port where a consumption or warehouse entry will be made.

2. Failure to “enter” goods. Imported goods which are not “entered” through Customs within 15 calendar days of arrival to the port of entry will be sent by Customs to a general order warehouse and held as unclaimed. If the goods remain unclaimed at the end of six months, the goods are sold by Customs at auction. The importer of record is responsible for paying storage charges while unclaimed goods are stored at the general order warehouse.

3.

D. Formal vs. Informal Entry.

- 1. Informal Entry.** Informal entries of goods cover personal shipments, commercial shipments and mail shipments that are being entered for "consumption" (i.e., for use or sale). In most cases informal entry can be used if the value of the goods being imported is \$2,000 or less. However, certain classifications of goods, such as textiles, certain types of footwear, and other goods subject to quota/visa restrictions, require a formal entry regardless of the shipment's value. In addition, personal shipments of goods with a value of over \$2,000 will require a formal entry.
- 2. Differences between informal and formal entries.** The major differences between an informal entry and a formal entry of goods is the bond requirement and the "liquidation" process. Liquidation is the final computation of duties and is the final step in the entry process. Goods admitted as informal entries do not require the posting of a bond and the goods are liquidated on the spot. When an informal entry of goods is being made, the Customs Inspector, not the importer of record, is responsible for determining the classification number of the goods being imported. In addition, the Customs Inspector also completes the Customs forms used for an informal entry.

By contrast, formal entries of goods are generally commercial shipments supported by a surety bond posted for the payment of Customs duties and overall compliance with applicable Customs requirements. In a formal entry, "informed compliance" places the entire responsibility for classification, valuation and documentation of goods for entry on the importer of record.

E. Formal Entry of Goods. To make a formal entry of goods for consumption, the following documents are required:

- 1.** A bill of lading, airway bill, or carrier's certificate (naming the consignee for Customs purposes) as evidence of the consignee's right to make entry.
- 2.** A commercial invoice obtained from the seller of the goods, which shows the value and description of such goods.
- 3.** Entry manifest (Customs Form 7533) or Application and Special Permit for Immediate Delivery (Customs Form 3461).

4. Packing lists, if appropriate, and other documents needed to determine whether the goods may be admitted into the United States.
 5. In any formal entry, the entry must also be accompanied by evidence that a bond has been posted with Customs to cover any potential duties, taxes or charges that may accrue as a result of the importation process.
- F. Other Forms of Entry.** In addition to entry for consumption, imported goods may also be sent “in bond”, to a bonded warehouse or by mail.
1. **Entry for Warehouse.** If the importer of record wishes for some reason to postpone release of the imported goods, such goods may be placed in a Customs bonded warehouse under a warehouse entry. The goods may remain in the bonded warehouse for up to five years from the date of importation. At any time during that five year period, warehoused goods may be re-exported without payment of any duty, or may be withdrawn for consumption upon payment of duty at the rate applicable to the goods at the time of their withdrawal.
 2. **Transportation of Goods “In Bond”.** If the importer of record for some reason wishes to “enter” the imported goods at a port other than the port of arrival in the United States, the goods have to be transported to the location where such goods will be “entered.” To preserve revenue derived from the assessment of Customs duties and other charges, the goods enter the process known as “traveling under immediate transportation procedures.” This process is initiated by the importer of record by execution and delivery of the Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit (Customs Form 7512). Under this process, the goods must travel from the port of arrival in a bonded status to the intended port of entry, where the normal process for formal entry will occur.
 3. **Entry by Mail.** In some cases, the importer of record may find that it is to their advantage to use the United States Postal Service, rather than courier services, to import goods into the United States. The process of entry by mail closely resembles informal entry by courier and is generally subject to the same limitations.
- G. Classification of Goods.** All goods that enter the United States are categorized in accordance with the provisions of the Harmonized Tariff Schedule (“HTS”). The process of determining what category most appropriately defines/describes the imported goods is known as

“classification.” Classification and appraisal are the two most important factors affecting the dutiable status of imported goods. The classification number under the HTS must be provided by the importer of record at the time an entry is filed.

- 1. Familiarity with the HTS.** Classification of goods under the HTS is a complex process and requires that the importer of record reference: (i) the General Rules of Interpretation; (ii) the section, chapter and subheading notes; and (iii) the Explanatory Notes. Familiarity with the HTS is essential to facilitating the process of goods classification. The tariff schedule under the HTS is divided into various sections and chapters which deal separately with goods in broad product categories. For example, broad product categories include:

 - Basic materials such as wood, textiles, plastics, rubber, steel and other metal products in various stages of manufacture;
 - Chemicals;
 - Machinery and electrical equipment;
 - Agricultural products;
 - Intellectual property;
 - Other specified or non-enumerated products.
- 2. Basic methods of classification.** Sections I through XII of the HTS classify products by one or more of the following methods:

 - Under items or descriptions which name the imported goods, also known as an *eo nomine* provision;
 - Under provisions of general description;
 - Under provisions which identify the imported goods by component material; or
 - Under provisions which encompass the imported goods in accordance with their actual or principal use.
- 3. Multiple “classifications”.** When two or more provisions of the HTS appear to cover the same imported goods, the prevailing provision will be determined by the importer of record (and ultimately by Customs personnel) by reference to the Explanatory Notes and the General Rules of Interpretation for the tariff schedules.
- 4. Imported goods cannot be classified with certainty.** In those cases where the importer of record is unable to classify imported goods properly, the importer can submit a written request for a binding classification ruling to the National Commodity Specialist

Division, U.S. Customs, Attn: Classification Ruling Requests. Once issued, the ruling on classification will be binding at all ports of entry. While Customs personnel may provide classification-related opinions in response to oral requests, such opinions are not binding on the Customs officials at other ports of entry.

H. Valuation of Imported Goods. Generally, the Customs value for all goods exported to the United States will be the "transaction value" for the goods. If the transaction value cannot be used, then secondary bases for valuation are considered. The secondary bases of value utilized by Customs, in order of precedence are:

- The transaction value of identical goods;
- The transaction value of similar goods;
- Deductive value; or
- Computed Value.

I. Transaction Value. The transaction value of imported goods is the price actually paid or payable for the goods when sold for exportation to the United States, plus the following additional charges if not included in the price:

- 1. Packing costs.** Packing costs incurred by the shipper of the imported goods must be added to the transaction value if not already included in the price paid or payable. Packing costs consist of the cost incurred by the buyer for all containers and coverings of whatever nature and for the labor and materials used in packing the imported goods so that they are ready for export;
- 2. Selling commissions.** Any selling commission incurred by the buyer of the imported goods constitutes part of the transaction value. By contrast, buying commissions are not so included;
- 3. Assists.** An assist is any of the items listed below that the buyer of imported merchandise provides directly or indirectly, free of charge or at a reduced cost, for use in the production or sale of goods for export to the United States. The following are examples of assists that must be included in the transaction value of imported goods:
 - Materials, components, parts and similar items incorporated in the imported goods;
 - Tools, dies, molds and similar items used in producing the imported goods;
 - Merchandise consumed in producing the imported goods; and

- Engineering, development, artwork, design work, and plans and sketches that are undertaken outside of the United States. For these purposes, engineering type work will not be considered an “assist” if the service or work is (i) performed by a person domiciled within the United States, (ii) performed while that person is acting as an employee or agent of the buyer of the imported goods, and (iii) incidental to other engineering, development, artwork, design work, or plans or sketches undertaken within the United States.

The value of an “assist” is either:

- The cost of acquiring the assist, if acquired by the importer from an unrelated seller; or
- The cost of the assist, if produced by the importer or a person/entity related to the importer.

4. Royalties and license fees. Any royalty or license fee that the buyer is required to pay as a condition of the sale must be included in the transaction value, if not already included in the actual price paid or payable.

5. Subsequent proceeds. The proceeds, accruing to the seller, of any subsequent resale, disposal, or use of the imported goods must be included in the transaction value of the imported goods, if not already included in the actual price paid or payable.

J. Liquidation Process. Customs personnel at the port of entry review selected classifications and valuations, as well as other required documentation for entry of the imported goods, for correctness. The entry summary and documentation may be accepted as submitted without any changes. In these circumstances, the entry is “liquidated” as entered. “Liquidation” is the term used by Customs officials to indicate that the ascertainment of the rate and amount of duty for the imported goods is final. Liquidation is accomplished by posting a notice on a public bulletin board at the customhouse.

1. Changes required to effect liquidation. It may be determined by Customs that the entry of imported goods cannot be liquidated as entered for a variety of reasons. For example, there may be issues with the tariff classification or the valuation reported for the goods may be disputed. Where the changes required by Customs to complete the liquidation result in a rate of duty more favorable to the importer, the entry is liquidated accordingly and a refund is authorized for the applicable amount of the deposited estimated

duties. By contrast, if the change directed by Customs officials operates to impose a higher rate of duty, the importer of record will be given advance notice of the proposed duty increase and an opportunity to respond.

2. **Notice and response.** If the importer of record does not respond to the notice of rate increase, or if the importer's response is determined to be without merit, the entry of goods is liquidated in accordance with the entry documents, as corrected. The importer of record is then billed for the additional duty.
3. **Timing.** Entries must be liquidated within one year of the date of entry, unless the liquidation needs to be extended for an additional one year period. The total of all extensions of the liquidation process may not exceed four years.

III. OTHER ISSUES IN IMPORTING.

A. **Country of Origin Markings.** Federal law requires that every imported article produced be marked:

- In a conspicuous place as legibly, indelibly and permanently as the nature of the article permits;
- With the English name of the country of origin;
- To indicate to the ultimate purchase of such imported article the name of the country in which the article was manufactured or produced.

If an imported article is not properly marked with the country of origin at the time of its importation into the United States, a marking duty equal to 10% of the Customs value of the article will be assessed unless the article is exported, destroyed or properly marked under Customs' supervision before liquidation.

1. **Permanence.** Country of origin markings will be deemed sufficiently permanent if the markings will remain on the article until it reaches the ultimate purchaser.
2. **Nature of goods prevents marking.** In some cases, the articles cannot be marked to indicate their country of origin. In these instances, the outermost containers in which these articles ordinarily reach the ultimate purchaser must be marked to indicate the English name of the country of origin. Those articles or classes of articles which are not required to be marked because of the nature of the article are specifically defined in applicable Customs regulations.

B. Restricted Articles. The following articles require special licenses and/or permits for importation and are the subject of special Customs regulations. In most cases the following items are subject to regulation by other federal agencies in addition to U.S. Customs:

- Alcoholic beverages;
- Animals and animal products;
- Certain drugs and medications;
- Firearms and ammunition;
- Fruits and nuts;
- Meats and meat products;
- Milk, dairy and cheese products;
- Plants and plant products;
- Poultry and poultry products;
- Petroleum and petroleum products; and
- Vegetables

C. Jointly Regulated Goods. The following items must comply with applicable regulations of other federal agencies before being granted entry to the United States:

- Art materials
- Cultural property
- Hazardous, toxic or flammable materials
- Household appliances
- Certain electronics products
- Toys and other children's articles

D. Customs Brokers. Although Customs Brokers are not required for the entry and liquidation of imported articles to the United States, their services may prove invaluable and cost effective. Some of the services that these licensed specialists can provide to you are:

- Act as the importer of record for your business;
- Provide services connected with completion of Customs documentation and required forms;
- Act as a surety company for the issuance of Customs bonds needed for formal entries of goods;
- Provide expertise in the HTS system of classification of good for tariff schedules;
- Provide expertise in valuation of imported goods, assists, etc. needed to assure Customs liquidation;

- Serve as freight forwarders under transportation “in bond”; and
- Assist with permitting and licensing required for certain categories of imported goods,

While the use of Customs Brokers can be costly depending upon the nature of the goods being imported and the additional services which may be required to assure accurate classification, valuation and entry documentation, these professionals can be invaluable in helping to navigate the complex maze of the HTS, import quotas, etc.

You can obtain the services of a Customs Broker by visiting Customs at their website address, www.customs.gov. In the main menu under Ports. Within the Ports menu are links to various cities and the Customs Brokers available in that city are listed with their names, addresses and telephone numbers. The list is updated frequently.

II. RESOURCES. Some helpful resources for information include the following:

- The U.S. Customs website is located at www.customs.gov and contains a wealth of information, including answers to frequently asked questions.
- 29 C.F.R. Part I contains the Customs Regulations and is an invaluable primary source of information.
- Importing into the United States, A Guide for Commercial Importers is an informed compliance handbook available on-line at the Customs website.

FAQs About Importing Goods into the United States

Maureen M. Morrissey
Assistant General Counsel, The Americas
Tupperware Corporation



What Issues Should Be Considered Before Importing Goods into the United States?

- Who will serve as the importer of record?
- Will the imported goods be entered for consumption, in transit, or to a bonded warehouse?
- Under what form of “entry” will the importation occur?
 - Informal
 - Formal

What Issues Should Be Considered Before Importing Goods into the United States?

- How will the imported goods be classified under HTS?
- How will the imported goods be valued?
 - Transaction value
 - Secondary bases for value
- What documentation will be required for entry and liquidation of the imported goods?

What Issues Should Be Considered Before Importing Goods into the United States?

- What documentation will be required for entry and liquidation of the imported goods?
 - Bill of lading, airway bill or carrier's certificate
 - Commercial invoice
 - Entry Manifest
 - Packing list
 - Customs bond

Does My Company Need a License to Import Goods?

- Generally, you do not need a license to act as an importer
- However, some items themselves require a license or permit to be imported
- Customs documentation does require an “importer number” which is your EIN or SSN.

How Are Goods Classified for Importation Purposes?

- All goods that enter the United States are categorized in accordance with the provisions of the Harmonized Tariff Schedule (“HTS”).
- The process of determining what category most appropriately defines/describes the imported goods is known as “classification.”

How Are Goods Classified for Importation Purposes?

- Classification of goods under the HTS is a complex process and requires that the importer of record reference: (i) the General Rules of Interpretation; (ii) the section, chapter and subheading notes; and (iii) the Explanatory Notes.

How Are Goods Classified for Importation Purposes?

- The HTS establishes certain broad classification categories as follows:
 - Basic materials such as wood, textiles, plastics, rubber, steel and other metal products in various stages of manufacture
 - Chemicals
 - Machinery and electrical equipment
 - Agricultural products
 - Intellectual property

What Are the Benefits of Using a Customs Broker for Importing Goods?

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