

## FOCUSED ASSESSMENT PLAN

On December 8, 1993, the United States Congress enacted the Customs Modernization Act. The Act provided for “shared responsibility,” meaning that importers and U.S. Customs and Border Protection (hereinafter referred to as “Customs”) have a mutual responsibility to comply with trade and customs laws. The Act shifted the legal responsibility for declaring the value and classification of entered merchandise to the importer. The Modernization Act requires that importers use “reasonable care” in their import/export activities. As part of the implementation of the Customs Modernization Act, Customs established a trade compliance process known as “informed compliance.” The process of evaluating an importer’s system supporting customs-related operations was originally termed “Compliance Assessment” and is undertaken by the Customs Regulatory Audit Division. Customs targeted the top 1000 importers for Compliance Assessments.

To date, approximately 540 Compliance Assessments have been completed and approximately \$200 million in voluntary payments have been secured. Subsequently, Customs modified the audit process and renamed it “Focused Assessment.” The firm has structured a process to assist its clients in undertaking compliance assessments before being contacted by Customs in order to understand fully their responsibilities and to undertake corrective actions if necessary.

Our approach differs somewhat from other firms in that we believe that Focused Assessments can and should be substantially completed by company personnel. In this manner, the necessary activity can be structured so as to be an educational and training tool for company employees while at the same time significantly moderating the expense of the effort. It provides an opportunity to increase the depth of subject-matter knowledge and cross-train employees in the entire import/export process. As your attorneys, communications between us and information uncovered during the Focused Assessment is protected under the Attorney-Client Privilege.

The most important task in the Focused Assessment process is to review thoroughly current import and export operations in preparation for a potential Customs audit. Subjects include, but are not limited to, classification, valuation, financial accounting, special trade programs, origin marking, invoicing standards, entry, MPF/HMF, TIB, drawback, FTZs, recordkeeping, Customs communications, CBPF 28/29/Protests, exports, Federal Agency interface, etc. It is also useful to audit import entries, and examine actual business processes and sample imported merchandise to verify classification and origin marking. Finally, we find that the initiation of this activity also provides a good opportunity to use the information secured to prepare an Import

Compliance Manual and an Export Compliance Manual for future employee use. The existence of an Import Compliance Manual is now considered by Customs during its Focused Assessments and audits, and is viewed as evidence of “reasonable care” by importers. If an importer or exporter does not have such a Manual, the Focused Assessment will not be concluded until one is completed and presented to Customs. Such a document is also structured by many firms because of changes several years ago to the Federal Sentencing Guidelines that now include import/export statutory violations.

Our method of structuring such activity is to provide the company with a good deal of basic background information, and work with the company to determine the best possible means of undertaking the activity. We provide copies of selected Focused Assessment documents. If a company is unsure of the volume and detail of its imports and exports, information can be ordered from the federal government and reports prepared. (See Importer Activity Data/Exporter Data Activity document). To secure information on current management processes, detailed Import/Export Audit Questionnaires can be provided for completion by business units. Our normal procedure is to schedule an initial day for a seminar with key company officials to evaluate the documents, discuss their contents thoroughly, and establish a timetable for the review by company employees of the information and securing same. We believe it is essential to involve representatives from all relevant departments, including finance, purchasing/sourcing, legal, warehousing, manufacturing, and traffic/logistics. There may well be other departments of the company that are relevant to this project and should be included in the initial meeting. During the subsequent fact-finding effort, there is normally a good deal of telephone discussions on particular issues. Memoranda can be provided on any subject matter requiring further explanation. Generally, there is at least one other meeting that occurs. Our approach provides the opportunity for company employees to undertake a good deal of the Assessment on their own, thereby, providing a positive learning experience as well as significantly reducing costs. Further, the information that is secured from this review can then be utilized to update and prepare Import and Export Compliance Manuals.

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