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Customs

With one of the largest international trade and regulatory compliance practices in the world, Steptoe & Johnson LLP is noted for our ability to develop and implement strategies that take advantage of opportunities and minimize risks that arise in today's ever-changing global marketplace. Drawing on the strength and breadth of our practice, Steptoe is able to provide our clients with an integrated approach to their strategic customs planning and compliance. In 2007, Chambers named Steptoe's International Trade group the International Trade Practice of the Year.

With over 50 international trade lawyers in Washington, London, and Brussels, we regularly advise Fortune 500 companies and non-US entities on how to secure their international trade objectives when shipments are presented for review by US Customs agents. This includes analysis of all the matters that make up an import or export declaration including valuation, classification, country of origin, marking and labeling, qualification for NAFTA or other free trade program, import bond, and foreign trade zone issues. We help clients respond to US Customs notices of action and enforcement, (including forfeiture cases), conduct internal compliance reviews, and pursue Customs rulings and advisory opinions. In more than 60 years of practice, Steptoe has gained a national and international reputation for vigorous representation of clients. Our firm advised clients involved in some of the first audits under the Customs Modernization Act and since then has continued to expand its substantial experience by ensuring clients have adequate compliance systems that are capable of meeting long-standing import and export requirements as well as the new security standards under the Customs law.

The firm recognizes US Customs and import compliance requires a balance between detailed involvement by the importing company and the burdens on finite company resources. In addition, as part of the Department of Homeland Security (DHS), US Customs and Border Protection now requires companies to pay close attention to the physical security of their supply chain and import shipments. These new security obligations may add to existing compliance requirements and exist regardless of whether any import duties are due. Steptoe counsels a wide range of domestic and international clients regarding all aspects of compliance with this increasingly complex regulatory regime:

Brokers and POAs. Steptoe regularly advises clients on how best to manage their relationship with their licensed Customs brokers, when to issue powers of attorney, and what terms should be contained. Licensed Customs brokers are an important part of import compliance but US Customs regards such brokers only as agents of the importer, and errors caused by brokers are viewed by US Customs as errors by the importer. We work with clients frequently to achieve the correct balance between supervising the brokers and minimizing

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administrative burden.

Protests and appeals. Steptoe regularly prepares and files challenges to US Customs decisions at single or multiple ports of entry. These challenges may take the form of protests, request for reliquidation under § 520(c) or 520(d), supplemental information letters (SILs), or requests for further review at Customs Headquarters. Where necessary, Steptoe is always prepared to take such challenges up on appeal to the US Court of International Trade.

C-TPAT. The Customs–Trade Partnership Against Terrorism is nominally voluntary but increasingly has become the cornerstone for many companies to demonstrate compliance to US Customs. US Customs’ guidelines are lengthy and complex as they attempt to anticipate every possible shipment scenario. Steptoe regularly advises clients on choosing among the guidelines to implement those measures that apply to the particular situation while still presenting to Customs a security compliance plan that is strong and complete.

Focused Assessments (CBP audit). Our firm advised clients involved in some of the first audits under the Customs Modernization Act and since then has continued to expand its substantial experience in ensuring clients have adequate compliance systems that are capable of meeting US Customs law and procedures. We continue to work with clients during actual Customs audits, as well as companies conducting internal audits to maintain or improve compliance. Our work in these areas most often focuses on developing best practices that avoid unwieldy administrative burdens but still allow importers to comply with their substantial responsibilities under US law.

Duty reduction programs. Steptoe regularly advises clients on the use of duty reduction programs such as NAFTA, GSP, CBERA, and other free trade eligible regions. From the perspective of US Customs law, all imported merchandise from these regions is presumptively subject to duty. It is the responsibility of the importer to correctly analyze and declare the merchandise subject to duty free treatment, and to keep the records necessary to support such a claim. Steptoe regularly advises clients on when merchandise is eligible for preferential treatment and how to declare and record such transactions so that they will meet Customs requirements both at the time of entry and under any later examination.

Country of origin and marking requirements. Country of origin determinations for imported goods grow increasingly complex as the long-standing substantial transformation rule now applies only to certain goods from certain countries. More detailed “tariff shift” rules often apply for merchandise from free trade partner countries or for certain goods. Steptoe frequently advises clients on how to determine the correct country of origin

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rules. Also, we work regularly with clients to design required country of origin labels that will have the content and size necessary for commercial needs. We also assist companies in designing markings that will not only comport with the requirements of US Customs, but also the “Made in USA” and textile rules of the Federal Trade Commission, as well as the marking requirements of agencies such as CPSC, FDA, and EPA.

Penalties and prior disclosures. The most effective method of minimizing a company’s exposure to Customs penalties in connection with a particular error is to remove the authority or incentive to assess the penalty. When an importer finds an inadvertent error, a brief, properly designed prior disclosure letter can insulate an importer from potentially significant penalty exposure. Steptoe regularly counsels importers on internal reviews to find errors and strategies for prior disclosures to drastically reduce potential penalty liability. Where a prior disclosure has not been filed, and Customs claims a penalty, Steptoe regularly prepares petitions to mitigate or even cancel those penalties, depending on the circumstances, to the maximum extent permitted by the Customs Regulations.

Valuation. Properly reporting the value of imported merchandise is one of the most important aspects of any Customs declaration. An importer not properly valuing merchandise may be overpaying duties if it has not correctly analyzed its transaction for (1) the correct valuation methodology to be used, (2) when to apply assists, (3) non-dutiable charges (such as freight costs), and (4) other valuation issues. Even where the applicable duty rate is zero, an incorrect value is one of the easiest ways for local Customs officials to impose penalties. Steptoe regularly works with clients to analyze the specific facts of a transaction and ensure that the most advantageous valuation, consistent with the requirements of US Customs law, is identified and supported in the importers’ commercial documents.

Classification. The tariff classification number declared can be a trigger or flag for higher or lower duty rates, antidumping or countervailing duties, quotas, or several types of heightened scrutiny from Customs and other federal agencies. Steptoe regularly assists clients in working through the harmonized tariff system to declare the number or numbers that best fit the product and will be recognized as compliant by local Customs port officials.

Binding rulings. On all questions of Customs compliance, it is the responsibility of the importer to exercise reasonable care and to make the best efforts to reach a correct analysis supported by the law and regulations, past Customs cases, and the specific facts. In some instances, even after consulting these sources, the correct answer may nonetheless remain unclear. In other cases, the company may have a strong commercial interest in having certainty and

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confirmation before beginning a new venture. Steptoe regularly prepares request for binding rulings from Customs officials in New York and Washington for clients in these situations, so that the importer can be certain of the Customs treatment that will apply.

Import bonds. US Customs increasingly uses surety bond requirements to enforce both import procedures and duty liability. To purchase such a bond from an authorized surety company, the importer must provide detailed financial data and agree to indemnify the surety for almost any expense incurred. These obligations can have serious consequences, including on the availability of credit to the importer. Steptoe regularly advises clients on when such bonds are required and in what amounts, especially in connection with antidumping and countervailing duty cases, where substantial collateral is often required by the surety.

American goods returned. Headings 9801 and 9802 of the US Harmonized Tariff Schedule of the United States provide for substantial duty reductions for certain American-origin products that return after exportation. These provisions only apply in the specific circumstances described and only if the correct records are presented and maintained regarding the shipment. Without all the correct supporting steps, an American product is subject to the full rate of duty when imported. Steptoe advises clients on the successful use of these provisions as well as securing rulings to confirm that these provisions apply to certain transactions.