

Enforced Compliance

By Michael Laden

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The reality is if you are classifying your products incorrectly, sooner or later CBP will notice.

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2017 might be an interesting and especially painful year for non-compliant importers as the confluence of three significant improvements at U.S. Customs and Border Protection (CBP) will soon result in stepped up enforcement efforts. A number of you may have recently been the recipient of correspondence from CBP concerning your company's trade compliance. And, not to be the bogey man, but if you haven't received such a letter you very well may in the near future. In 1993 the passage of the Mod Act ushered in a new era of "informed" and "enforced" compliance. For years, CBP has been

focused on "informed compliance" with occasional spurts of "enforced compliance". The tides are shifting and in my humble opinion you can expect to see more "enforced compliance" in the very near future.

CBP's ability to "enforce" compliance has been significantly improved by three contributing factors. First and foremost, CBP has better data at their fingertips than they have ever had before. For years now CBP has been in the process of designing and deploying their next-generation computer system, known as the Automated Commercial Environment (ACE), for processing commercial trade. The system is now fully deployed and CBP is just beginning to reap the benefits of their improved analytics and data mining ability. This makes it much easier for them to identify and react to errant or suspicious data.

Secondly, they are doing a much better job of targeting using the Commercial Targeting and Analysis Center (CTAC). CBP is using a number of models, algorithms, data analytics and human intervention to better select shipments that pose a high risk. Augmenting this effort is CBP's vast library of scanned images that are used to detect shipment anomalies. Just recently CBP hosted the 5th Annual CTAC Ops Expo for Partnering Government Agencies. Click here to see our article on the [CTAC Expo](#).

The third contributing factor to this new era of enforced compliance is CBP's new operating structure called the [Centers for Excellence and Expertise](#) (CEE); they are proving to be a strong force multiplier in combating trade fraud. The CEE's are essentially a fusion center for processing commercial trade, there are a total of ten (10) industry specific CEE's strategically located around the country. In the old days, Import Specialists located at each U.S. port of entry determined if items were correctly classified and valued. It was difficult, if not impossible, to control uniformity at all 300+ U.S. ports. Today, all of that knowledge has been centralized at the CEE's making it much easier to spot classification and value errors.

When combined, these three new tools give CBP much better visibility to trade data and the ability to slice and dice the data in search of anomalies. In recent weeks some CBP ports have issued letters authored by Regulatory Audit citing Informed Compliance Publications and Other Informative Documents. The letter goes on to remind recipients that they may avail themselves of a Prior Disclosure to avoid CBP 19 U.S.C. § 1592 penalties. To see a sample of this CBP letter click here [CBP Trade Compliance Letter](#). These letters are a serious indication that CBP is stepping up trade enforcement and if you have received such a letter it is very likely you are a candidate for an audit. Recipients of the letter are kindly asked to acknowledge receipt of the

letter by signing and returning it to CBP. If your company receives such a missive we *urge* you to consult with counsel before signing and returning it. You should also conduct an immediate and comprehensive review of your ACE data. CBP's Fiscal Year begins October 1 and they are fine tuning their selections for 2017 audit activities right now. Watch the mailroom and if you receive a questionnaire or a call asking where your corporate records are located, the audit process has begun.

The bottom line is; the days are numbered for importers who intentionally misclassify product to achieve a more favorable duty rate or to avoid anti-dumping or countervailing duty. If you come from a, "We've gotten away with it this long" culture, times are about to change. And if CBP finds the errors before you do in filing a Prior Disclosure, I predict bad things are going to happen. Again, I hate to be the one to tell you that monsters are under the bed, but the slumbering giant is awakening and I expect a robust year of trade enforcement stories in 2017. Compliant importers should take this opportunity to double-check critical or questionable classifications and to ensure that all brokers are using correct classifications. Importers should avail themselves of the data in [CBP's ACE Portal](#) to accomplish this task.

