



Customs, Compliance and Reasonable Care

Roles and responsibilities - interesting comments

Always eager to inform our customers, we would like to bring forward the following important issues.

We regularly hear importers make the following comment: «Our customs broker prepares our documents and presents them to customs. He is the person responsible for any errors or problems.»

Unfortunately, this is not the case! The importer is RESPONSIBLE, to the customs authorities and other governmental organizations, for the declaration of entry or export of the goods.

Before working for the importer or the exporter, the customs broker has him sign such legal documents as: "Master Authority" and/or "Capacity to act" and/or "Customs Broker Limited Power of Attorney". With these documents, you give to the customs broker the mandate to clear your goods and act in YOUR NAME. He will receive all notices, customs invoices and other relevant documents that he will later transmit to you. All the documents will bear your name as the importer or exporter.

When the customs broker prepares these documents, all the information used comes from the importer or from the exporter, of its suppliers, etc. The broker transfers this information on the forms and/or in the data system of the customs authorities of the country in which he holds a mandate.

We also hear importers and/or the exporters say to us: «It is my customs broker who carried out the classification of our goods according to the harmonized system. If the customs refuse our classification, he must be held responsible.»

We are referring here to the tariff classification or to the customs nomenclature. The harmonized system is a system of classification of conveniences, goods. The countries that adopt it sign the International Convention on the Harmonized System.

The customs broker carries out the research and gives you the classification number according to the description, the documents and the technical record that you gave him. When he gives you the numbers, he always adds a "limit of responsibility" in relation to what you will have transmitted as information.

In the event of any irregularities or errors, the importer is held responsible and with the assistance of the customs broker makes the necessary corrections himself. To support our statements, within the framework of the AMPS (D22-1-1 Memorandum), the importer or the exporter (Client Customs Account Name/Address – client/business name and address) and not the customs broker is identified on the Notice of Penalty Assessment.

Customs being under federal jurisdiction, the importer and/or the exporter, if he is imposed a non-compliance infraction and if he judges it opportune, must prove its innocence.

Consequently, the customs broker is accountable to his customer, the importer or the exporter, and the importer or the exporter is accountable for their actions (entered and/or exited goods) to the customs authorities and/or other government agencies concerned.

The importer or the exporter can always, if he desires, go to the nearest customs office or border and ask the customs authorities to confirm the classification. Do not forget to bring with you the same documents as those provided to your customs broker.

The only means of being entirely assured of the classification is to ask the customs authorities for an "Advance Ruling". However, please note that the government of Canada decision is valid only in Canada.

For each country, it is necessary to make a new request.

Another important point: What happens if you and/or your supplier have modified the product? You must start all over again!

In the event of litigation with the customs authorities that, for example, rejects your classification, two questions should be asked:

1. Is it the same product that we classify today in regards to this rejection, EXACTLY the same product that the importer or the exporter had imported or exported 2 years, 5 years or 10 years ago?
2. Who had carried out the classification at that time? Your current broker, your former broker, another specialist or an employee of the importing or exporting company?

The importer or exporter files and registers should allow you to answer these questions.

We will end on these recommendations:

Your customs broker, he is your partner: choose him well!

No matter what you are working on with your subcontractors and your suppliers, always keep at least one copy of all the transmitted documents or receipts. In the event of litigation, customs authorities, your subcontractors and your suppliers will be happy to refer to it. These documents are an integral part of your customs compliance and your reasonable care obligations.

There is an old saying that continues to remain appropriate: "Words fly away but the writings remain!"

Vanasse & Associés Consultants inc. can accompany you in all your steps and will help you structure your logistics, customs, and customs compliance and reasonable care departments.

If you have questions or if you wish to get information on how our services can bring added value to your company, please contact us or visit our Web page www.vanasse-associes.com

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