Strategies for Managing A Customs/Trade Audit in the U.S. and Canada

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Dalton Albrecht
Dan Kiselbach
Miller Thompson LLP
Vancouver BC

Judy Haggin
J.L. Haggin & Assoc.
Portland, OR

Joel R. Junker
Joel R. Junker & Assoc.
Seattle, WA

Mike Hodes
Hodes Keating & Pilon
Chicago, Ill.

Matt Nolan
Arent Fox LLP
Are you Celebrating an Olympic Victory?
Or Have you been notified that CBP/CBSA Has Scheduled an Audit for Your Company?

Holy crap! Pete, is that you?!
Overview

1. Types of Audits
2. What is the Government Looking For?
3. What does company counsel need to worry about?
4. Common Substantive Issues in an Audit?
5. What if I “fail” an audit?
Types of Audits

- Focused Assessment (FA) - CBP
- Multi-Program Verification - CBSA
- Single Program Verification - CBSA
- Quick Response Audit (QRA) - CBP
- Follow-Up Audit
- NAFTA Verification
- AD/CVD Verification
More Types of Audits

- Regulatory Audit - Generalized System of Preferences
- CF 28 Requests for Information
- CTPAT
- Importer Self Assessment (ISA)
- And Many more!
Some Key aspects of FAs/Multi Program Verifications

Focus on “Material Risk”

- Risk based approach to audit importer compliance
- Goal: to improve trade compliance through effective internal controls
- Development of programs to address two components:
  - Framework of internal controls based on SAS 78
  - Audit trail from financial records to customs entries
QRA Subjects

- Improper Valuation - Undervaluation
- Possible Anti Dumping Duty Violations
- FTZ – Inventory Discrepancies
- Bonded Warehouse – Missing Merchandise
- IPR Infringements
- ICE Fraud Support - Evidence & Quantifications
- Health & Safety (Food Products, Toys, Lighters, Electronics, etc.)
- Container Exam Station (CES) – Overpricing
- Review of Prior Disclosure
Two Basic Audit Approaches:

(FA) Select Auditee

Audit Planning

Preliminary Survey/Risk Analysis

Internal Control Description & Analysis

Develop Findings & Recommendations

Expand Tests of Control Systems

Follow-up

(QRA) Receive Request for Support

Join w/Client To Plan, Survey & Set Objectives

Obtain Evidence to Satisfy Objective(s)

Report Findings

Report Findings
Company Contacted

7 days
Questionnaires sent to Company

30 days
Questionnaires Returned

15 days
Advance Conference and Walkthru

30 days
FA Timeline (Goal)

- Entrance Conference: 30 days
- Immediately: Field Work
- After report is drafted: Exit Conference
  - 1 year from entrance conference: Report Issued
  - 6 months of report date: Follow-up
- Mod. Act. (120 Days)
Canada - Audit Approaches

1) Multi Program Customs Audit - No Time Limits

- Valuation, Classification, origin, SIMA
- Systems Verification
- Begins with a letter, respond in 30 days or extension
- Questionnaires – 30 days BUT Importer paddling furiously!! (duck under water)
  - Extensions possible
- Systems Discussion – Target Information
- 25 transactions; testing / auditing
- Preliminary Report – Respond with Rationale / Argument
- Final Report – DAS and / or AMPs
- Appeal – Administrative / Court
Canada - Audit Approaches
2) Focused Customs Audit – No Time Limits

- Often result of tip, or industry target
- Single Program Classification or Valuation
- Questionnaire focused, detailed on program
- More enforcement oriented
- Same process as multi-program
3) AD/CV Verification – TIME LIMITS

- Tight Timeline – 30 or 37 days to respond to Questionnaire
- If Response not completed in time no audit, BUT cannot export or import
- Suspicion – highest enforcement
- NO extensions!
- Be Prepared or ELSE!
  - Theory of Case
  - Information overload
  - Putting Response Together is a Big Issue
What is the Government looking for?

- Reasonable care standard
- Protect revenue/supply chain security
- Internal controls, policies, procedures
- Ensuring qualification for duty exemption programs
- Training of personnel
- Proper monitoring of brokers
Commonly Arising Substantive Audit Issues

Record Keeping

- Are the records there when you need them?

What do you mean you can’t find the entry?
Preference program eligibility documents; *e.g.* NAFTA Certificates of Origin

In addition to the “usual” records specified on the (a)(1)A) list, the auditors may want to see broader categories of records (*e.g.* complete paper trails of a transaction from the initial P. O. through final payment)
Classification

- Changes in tariff classification resulting from changes in product
  - Material changes
  - Design changes
  - Use changes

- Incorrect statistical suffix
Valuation

- Non-dutiable charges ("NDC’s")

Estimated v Actual (T.D. 00-20)

Evidence of payment
“Denial” ain’t just a river in Egypt!
- Understanding the fine details

What isn’t an assist (19 CFR 152.102(a)(1) and (2))

Valuing the assist (19 CFR 152.102(a)(3) and 152.103(d))

Apportioning the assist (19 CFR 152.103(e))
Interest Payments

Must comply with T.D. 85-111
  Separately identifiable from price paid or payable
  Written financing arrangements
  Evidence goods actually sold for price paid or payable
  Interest rate does not exceed prevailing interest rate

(See HQ W563534, May 6, 2009)
Computed Value

Don’t include royalties in CV (19 CFR 152.106- *It’s not there!*)

Related Party issues

Defending transaction value

Payment by setoff (Did we reduce the invoice price?)
Special Program Eligibility (FTA’s/GSP)

Documentation of program eligibility

Who is responsible and for how long?

GSP: The exporter, 5 years (19 CFR 10.173(a)(1)(ii))

ATP: The exporter, 5 years (19 CFR 10.207(b)(1)(ii))
Who is responsible and for how long? (con’t)

CBTPA: Joint, depending on what is being reviewed (19CFR 10.227) 5 years

NAFTA: The importer, 5 years
   *The properly executed Certificate of Origin is presumptively valid for NAFTA eligibility subject to post-entry verification* (19 CFR 181.22)

DR-CAFTA: The importer, 5 years (GN 29(l)(ii))
Who is responsible and for how long? (con’t)

Acquiring Supporting Documentation

Who is in possession of the information?

How can you get it?
What happens if you fail an Audit?

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