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“My Customs Broker does that for me”

A common refrain heard from importers when asked about certain of their activities related to importation of merchandise is “my broker does that for me”. Not a bad answer since, today, customs brokerage firms are large, well staffed, fully resourced and bring great knowledge and experience to the services provided for their clients. In order to undertake these services customs brokers must be licensed by U.S. Customs & Border Protection. The importer has, necessarily, provided to the broker a limited power of attorney to act on its behalf in the facilitation of the conduct of Customs business. That power of attorney does not relieve the importer of any of its regulatory responsibilities.

Under Customs regulations, brokers have regulatory responsibilities they must fulfill when acting on behalf of a client company. Fundamentally, a principal responsibility is to properly and accurately employ the information provided to them by the client/importer when acting on that client’s behalf. Critical here is the part that speaks to employing the information provided by the importer. It is at this point that the refrain “my broker does that for me” is too often heard. A customs broker may be expert at advising a client on any number of regulatory issues related to the import of merchandise but, at the end of the day, the importer bears the ultimate regulatory burden for the accuracy and completeness of the information conveyed to CBP.

There are three very basic areas of an importer’s compliance with the Customs regulations that a broker can offer advice and counsel on but then bear no regulatory liability for that which is given. These areas are classification under the Harmonized System, valuation of imported merchandise and the importer’s responsibility for the maintenance of records.

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“My Customs broker does that for me” continued . . .

Drawing upon their experience dealing with a wide range of commodities a broker can advise and suggest appropriate classifications under the HTS. However, it is the importer's responsibility to make the final decision and then to live with the consequences. In the view of CBP, the party whose importer's number appears on the entry is the party responsible for the classification. CBP does not accept “my broker classified that for me” as a mitigating factor in non-compliant classification of imported goods. Who knows your imported goods better than you do? Your broker may be asked for an opinion but, in fact, may never have actually seen or touched the thing you are asking them about.

On issues of valuation, the broker is generally further removed from the actual financial transaction between the importer and the foreign seller. How would your broker know if there are any assists to be declared; any proceeds of subsequent sale; any dutiable license fees or royalties to be paid? These are elements of a financial transaction that may be known to the importer only after its broker has facilitated a customs entry. CBP does not accept “my broker didn't tell me about that” as a mitigating factor in the declaration of incorrect values for appraisal and assessment of duty. You are the importer; it's your customs transaction. Your broker is merely facilitating it for you.

Finally there is recordkeeping. The Customs regulations, 19 CFR Part 163 speak in great detail to an importer's recordkeeping requirements. Too many importers believe that their recordkeeping requirements consist solely of those documents returned to them by their broker accompanied by the broker's invoice for services rendered. Think about it. Those documents contain all the information that CBP already has as a function of an entry having been filed. It is the normal books and records within the importer's company that go towards supporting what has been declared to CBP in an entry filing. In other words, none of your records that a broker would ever have nor would ever see.

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"My Customs broker does that for me" continued . . .

Your broker, in fulfilling its own regulatory requirements to CBP maintains only those documents provided by the importer that were used in facilitating a customs entry. Does your broker maintain your purchasing records, your finance and payables records, your receiving records, your inventory records? CBP will not accept "my broker does that for me" as a mitigating factor for the failure of the importer to maintain adequate records supporting a customs transaction. The main reason is because your broker does not, in fact, do it.

It is critical that an importer fully understand what its regulatory obligations are and how those must be fulfilled. Customs brokers are, for the most part, experts at what they do. What they do expertly is facilitate transactions with CBP by accurately employing all the information provided to them by their client – you, the importer.

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