Apparel Imports to be Under Increased Scrutiny as U.S. Customs Expands Workforce

Tara
Donaldson

U.S. Customs and Border Protection (CBP) recently announced it would add 2,000 new officers to its workforce, and apparel imports will be under increased scrutiny as a result.

The additional CBP officers will be deployed to 44 ports in 18 states including: New York; Los Angeles; Detroit; Buffalo, New York; Houston; Dallas; Chicago; Las Vegas; Laredo, Texas; Nogales, Arizona; and New Orleans.

Tom Gould, senior director of customs and international trade for Sandler, Travis & Rosenberg said, “Customs would like to say that it means shorter lines when you’re flying international, but what I think it means is simply that there’s going to be more scrutiny of companies that import products into the US.” He added, “There will be more cargo exams, more holds, more seizures, more penalties, more inquiries, more requests for information.”

With regard to the textile sector, CBP has always focused its efforts on promoting legitimate trade, but now that customs will have added inspectors on hand, product valuation especially will be watched more closely.

Gould said he has definitely seen customs doing more enforcement activity with regard to undervaluation of late. “They’re looking at certain types of transactions that lend themselves to undervaluation,” he said.

And textiles certainly fall within that category.

Apparel is subject to some of the highest import tariffs, with duties averaging 16 percent per garment and reaching as high as 32 percent. In fiscal 2012, duties collected on textile and apparel imports to the U.S. totaled $12.4 billion, or 41 percent of all duties paid by importers that year, according to CBP.

“If a company is doing any transaction where duty rates are high, they should know if they’re doing things right,” Gould said. “Those execs and those companies must be prepared, and they should be doing their own audits before customs comes auditing, so they’re not hit with a surprise.”

While some companies certainly make knowing mis-valuations, Gould said he has seen situations where many do it unknowingly. And there are four areas that can be particularly troublesome for importers when it comes to properly valuing their merchandise: related party transactions, royalties and license fees, use of buying and selling agents and assists.

Related party transactions are always a potential concern for Customs officials. Sometimes, a U.S. importer may have officers and directors in common with the manufacturer, or the owner of the factory could be the importer’s brother-in-law, and those relationships could influence the price and, in turn, the valuation of the goods, Gould said.

In certain instances, royalties, license fees and even agents’ commissions could be considered part of the value of the goods—something many companies aren’t wise to—and if the importer fails to add in these costs, it could be undervaluing its goods from a customs perspective, Gould said.

Then there are assists, where product components are provided by the importer to the exporter at no cost, or reduced cost, and are ultimately not being included in the price.

Fabric is one common type of assist. U.S. companies may buy greige goods, send them to an overseas factory for cut, make and trim (CMT), and then omit the value of the fabric and the cost of getting it to the factory from the imported product's final price, which is an undervaluation.

Customs has also often frowned upon U.S. retailers bringing goods in landed duty paid (LDP), meaning the foreign manufacturer takes responsibility for shipping goods and having them cleared at customs, instead preferring goods be shipped free on board (FOB), meaning the apparel importer takes responsibility for its product clearing customs.

What can sometimes happen with LDP, Gould explained, is that the foreign manufacturer sets up a U.S. office to handle the imports. And, according to Gould, "The importer company is often a small, hard to get at company, and it's easy for that company to fold and set up a new company next week if customs comes knocking. So I'm seeing that customs is cracking down on those type of transactions."

While these things have always been areas of concern for Customs, Gould said over the last couple years, Customs has realized they have been passing on more complex or defined violations because they have been so focused on security post 9-11.

The new expanded workforce is expected to allow for increased enforcement operations. When necessary, U.S. Customs sends teams of people overseas to inspect factories and garments, and these audits happen more often that we might think, Gould said. In 2012, Customs initiated 34 textile investigations, and obtained five criminal arrests, 13 indictments, one conviction, seven administrative arrests, and 40 seizures valued at $10.6 million dollars.

If a company is found to be in violation over valuation, it could be responsible not only for paying the owed duties, but for paying penalties that can range from two to eight times the original duties. "I have seen a ton of companies going out of business because of underpaid duties three or four times their profit," Gould said.

But if retailers know what they are doing, there are ways to avoid paying excessive penalties, Gould noted. With the Prior Disclosure process, companies that know, or discover, that they've made a valuation error and notify customs will often only be required to pay the appropriate duties with interest and customs won't issue penalties.

"That's something that I see happening a lot with companies and sometimes customs will encourage companies to do that," Gould said. "They'll smell a violation and will recommend prior disclosure."

Most often, if a company is willing to disclose, customs will take what it is owed and go away quietly. And, according to Gould, "Now that that company has gone through the process and shored up their compliance procedures, they are probably going to be a lower risk importer in the future," and ultimately receive less scrutiny.