

By Kevin Doucette, director of North American trade policy and compliance for C.H. Robinson

If there's anything consistent about trade regulations, it's that you must stay up to date on any changes that might affect your organization. Understanding the basics of trade compliance can make it easier to keep up with updates, changes, and additions to trade laws.

Typically, at this time of year, I present at several C.H. Robinson [Trade Compliance and Policy Seminars](#) around the country. Due to the spread of COVID-19, these in-person events are simply not possible at this time. Instead, we're utilizing virtual channels like this blog, and [recent webinars](#), to deliver information about import and export compliance.

What you need to know about import trade compliance

What is reasonable care?

Essentially, reasonable care is made up of the actions taken by an importer of record. U.S. Customs expects importers of record to take responsibility for their actions and demonstrate that those actions are reasonable. Reasonable care helps U.S. Customs properly assess duties, collect accurate trade statistics, and determine admissibility of goods into the country.

To demonstrate reasonable care, importers of record must make timely entries with Customs and ensure that they complete entries with the correct declared value, classification, and rate of duty. The most common ways to demonstrate reasonable care include:

- Following Customs regulations
- Knowing the terms of transactions
- Knowing the description, use, composition, and origin of merchandise
- Entering merchandise correctly
- Providing experts with material facts and circumstances
- Establishing ongoing procedures and policies to maintain compliance
- Detecting and reporting violations

What is due diligence?

Whereas reasonable care reflects the actions of importers, due diligence refers to the obligations of Customs house brokers. Due diligence extends to financial settlements, answering correspondence, and preparing or assisting in the filing of records related to any Customs business matter.

Many importers contract with Customs brokers when importing. However, there is often the misconception that these contracts alleviate a company's requirement to act with reasonable care. But this is simply not true. Using a broker to complete entries is only meant to assist with, not remove, an importer of record's obligations.

What is informed compliance?

If reasonable care and due diligence are the responsibility of importers and brokers, informed compliance is the responsibility of U.S. Customs to educate the industry on regulations and policies. The government agency has multiple ways to provide this information, including:

- Customs and border protection website
- Binding ruling program
- Customs bulletins
- Federal register
- Outreach programs

What you need to know about export trade compliance

What is an export?

An export is an actual shipment or transmission of items or the release of software or technology to a foreign national within the United States. Items can be a commodity or physical good, but also include more incorporeal items like software, diagrams, and technical data. By this definition, depending on the nature of the content, an email may be considered an export that requires a license to send—even if the recipient is an employee of the company.

Here are a few examples of exports:

- Actual shipment or transfer of physical, tangible items

- Hand carries (engineer's laptops or drawings)
- Electronic (email attachments) or telephonic (facsimile) data transmissions
- Foreign installation and maintenance
- Employment of foreign nationals
- Visits to one's company by foreign nationals

Who regulates exports in the U.S.?

Several federal agencies govern exports in the United States, either the "control" or procedural" piece. Depending on your commodity type, you may need to follow regulations from more than one agency. The most common agencies involved in exports include the U.S. Commerce Department, U.S. State Department, and U.S. Treasury Department. Common export regulations associated with these departments include:

- Export Administration Regulations ("EAR")
- International Traffic in Arms Regulations ("ITAR")
- Foreign Trade Regulations ("FTR")

Five questions govern every export transaction

Successfully maintaining compliance with export laws requires you to accurately declare the following information for every export transaction. The answers to these questions will affect the export process of your items.

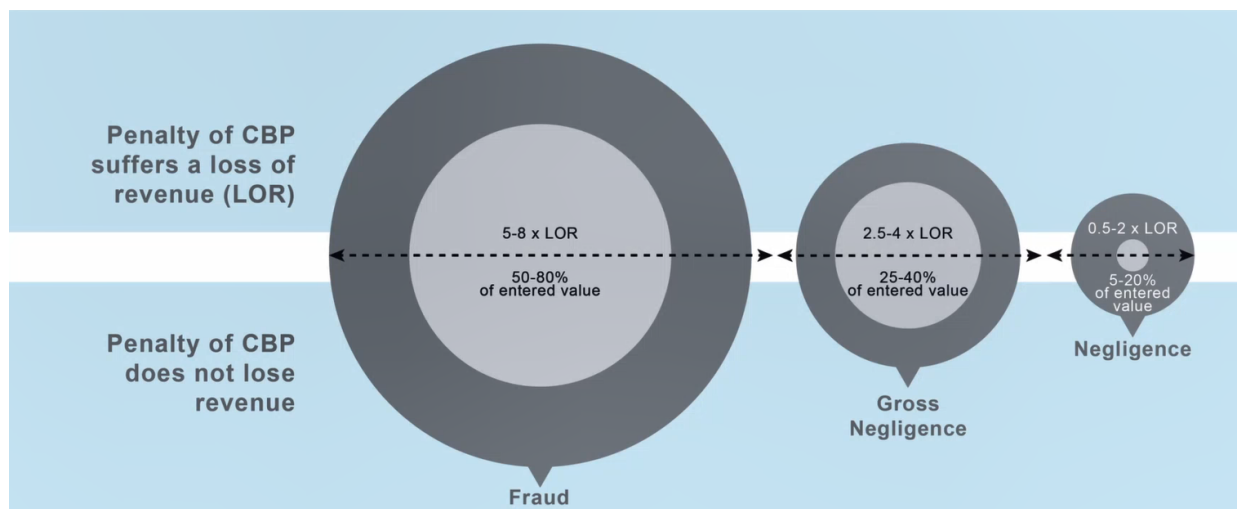
1. What is the item being exported?
2. Where is the item going?
3. Who will use the item?
4. Why do they want the item?
5. What other functions/activities do they perform?

Avoiding penalties associated with importing and exporting

The cost of noncompliance can be very expensive. When it comes to importing and exporting, use common sense. If something feels off about a transaction, stop and investigate. The potential consequences of proceeding in error can be extremely high.

Import penalties

The penalty provisions for imports is based on if U.S. Customs suffered a loss of revenue or did not suffer a loss of revenue. From there, the penalties are further broken down into negligence, gross negligence, and fraud violations.



For example, an organization misclassified an item. It should use a classification with a 6% duty rate. However, due to the misclassification, it's been using one with a 0% duty rate. In this example, Customs could charge the company with gross negligence; the penalty would be 2.5-4 times the 6% duty rate. Or if it's a non-revenue violation, the organization could be charged 25-40% the value of goods. As you might imagine, the charges can quickly add up.

Export penalties

It is a privilege not a right to export from United States. Incorrectly following export procedures can lead to large expenses, loss of export privileges, and even prison time for criminal penalties.

Violations against EAR face both civil and criminal penalties. Civil penalties are charged \$11,000 per violation, unless the incident involves national security, then a violation can be charged \$120,000. Civil penalties also include the denial of export privileges for up to five years and the preclusion of practice. There are also criminal penalties for individuals who knowingly violate EAR. A person who knowingly violates the EAR will receive a penalty of five times the value of the shipment, or \$50,000, whichever is greater and/or up to five years in prison. Someone who willfully violates the EAR will face a penalty of five times the value of the shipment or \$1 million, whichever is greater, and/or up to ten years in prison.

In addition to control penalties assessed under the EAR, it is more than likely that your electronic export information (EEI) was also incorrect, which will result in penalties under FTR. Like EAR violations, these come with both civil and criminal penalties. Civil penalties include fines for each day where EEI was supposed to be filed but was not or was delinquent. The civil penalty charges \$1,100 per day, never to exceed \$10,000. Criminal penalties occur when someone knowingly fails to file, or knowingly files false or fraudulent information. Then there will be a charge of \$10,000 per violation and/or five years in prison.

While prison time might seem like the most serious consequence here, consider that the loss of export privileges lasts for three to five years, which often causes the company to go out of business. Prison time certainly affects an individual's life, but loss of export privileges can mean everyone at a company is affected.

Wrapping it up

Even your best efforts to stay in compliance with import and export regulations can fail for many reasons, so it is essential that you review your trade processes on a regular basis. When errors are identified, address them and work to prevent them in the future. Making sure that you are compliant helps your organization avoid penalties and negative public exposure.

This has merely been a brief introduction to importing and exporting. For more detailed information about trade compliance, check out our recent webinars:

- [Import 101: Your Responsibilities and Common Areas of Risk](#)
- [Export 101: Rules to Follow When Exporting from the U.S.](#)

This article was originally published on [C.H. Robinson's blog](#).