

# Reasonable Care **vs** Responsible Supervision

Considering Increased De Minimis Enforcement



# CUSTOMS MODERNIZATION | IMPORTER

## “Mod Act”

- Informed Compliance –

*The trade community needs to be clearly and completely informed of its legal obligations.*

*CBP to provide information on right and responsibilities under Customs laws.*

- Reasonable Care –

*Importer of record is responsible for using reasonable care to enter, classify and determine the value of imported goods.*

*Importer to provide any other info necessary to enable CBP to properly assess duties, collect accurate statistics*

- Shared Responsibility –

*Mutual responsibility of importer and CBP to ensure compliance.*

# CUSTOMS MODERNIZATION |

# CUSTOMS BROKER

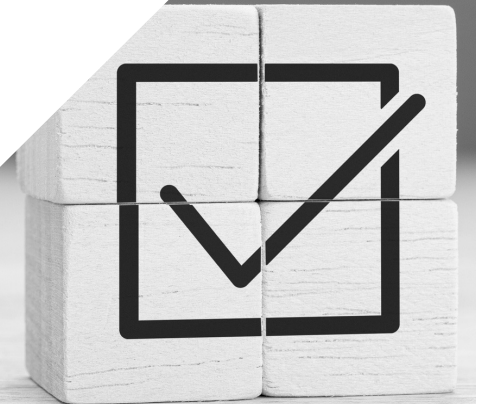
## “Broker Mod”

- Responsible Supervision and Control (RSC)  
*The licensed entity must exercise responsible supervision and control of the transaction of “Customs Business”*
- Regulatory changes -19 CFR Part 111
  - Increased RSC factors from 10 to 13
  - Requires employment of sufficient number of licensed brokers
    - Size of the entity
    - Skills and abilities of the employees & supervising employees
    - Complexity of similarity of tasks
  - Provide supervision plan to CBP upon permit application

# INFORMED COMPLIANCE

## Informational Resources –

- Informed Compliance Publications (ICPs)
  - Valuation, FTA, classification, recordkeeping
  - CSMS #63096696 importer obligation in completing cert of origin, declarations, statements – Nov. 2024
- Directives and Handbooks
- Customs Bulletins and Decisions
- Trade Outreach Webinars
  - CBP Natl Import Specialist Classification



# REASONABLE CARE

## Guidance Document

- General questions for all transactions
- Tariff Classification
- Valuation
- Country of Origin, Marking
- IPR
- Forced Labor

What procedures do you have to demonstrate your Reasonable Care?

*What Every Member of the  
Trade Community Should Know:*

## Reasonable Care

An Informed  
Compliance Publication

September 2017



U.S. Customs and  
Border Protection

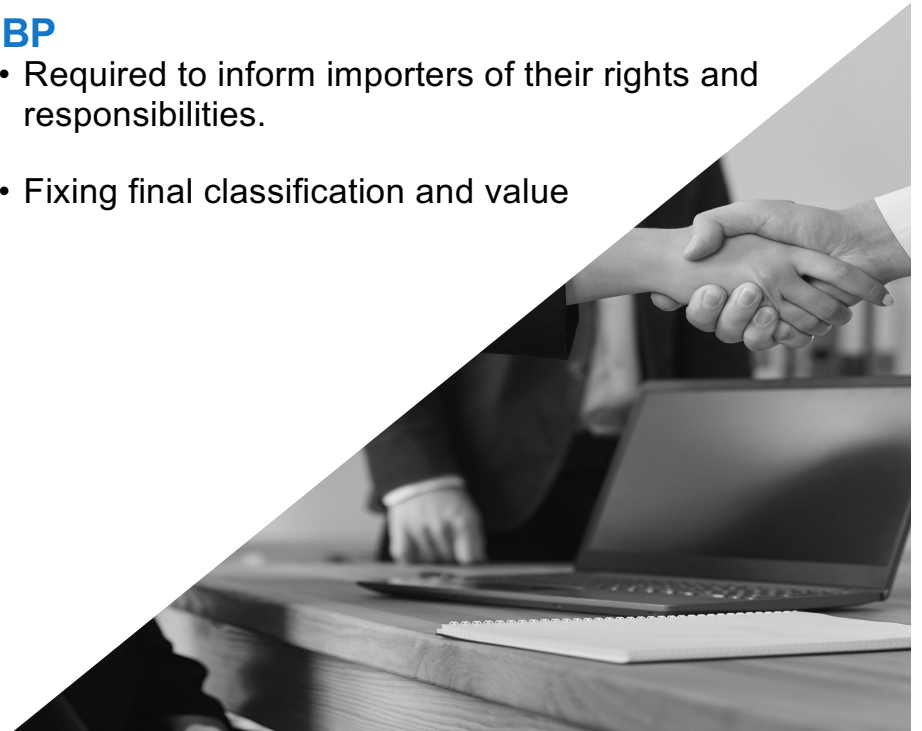
# SHARED RESPONSIBILITY

## Importer

- Required to be aware of their legal obligations
  - Consultation with a qualified expert
- Importer required to make their own duty determinations
  - Seek binding ruling
  - Reference CBP CROSS

## CBP

- Required to inform importers of their rights and responsibilities.
- Fixing final classification and value



# DE MINIMIS

## 19 USC 1321 - Section 321

- Admission of articles free of duty and tax
- Aggregate value not to exceed \$800
  - Imported by one person on one day
  - Fair retail value in the country of shipment



# ENTRY TYPE 86 TEST

## 2019 Deployment

- Deployment of special entry type – 86
- Allows for entries to be file via ABI
- Fully electronic release
- Low value filing for goods subject to PGA

## 2021

- Administrative Ruling Related to Domestic Warehouses and Fulfillment Centers

## 2024

- Test modifications
- Changes made in response to enforcement challenges



# ENFORCED COMPLIANCE

## Enforcement Priorities

- Importation of illicit substances like fentanyl and other narcotics,
- Counterfeits and other intellectual property rights violations,
- Goods made with forced labor

## Violations Identified

- Entry by parties without the right to make entry,
- Incorrect manifesting of cargo
- Misclassification
- Misdelivery (e.g., delivery of goods prior to release from CBP custody)
- Undervaluation
- Incorrectly executed powers of attorney

# ENFORCED COMPLIANCE CONTINUED...

## **April 2024** – CSMS vague description of merchandise

- Implement cargo messaging to communicate with the entry filer on shipments that have vague noncompliant cargo descriptions

## **May 2024** – Broker suspensions

- CBP suspended multiple customs brokers from participating in the Entry Type 86 Test

## **Jan 2025** – Systematic ABI enforcement

- Jan 17 - warning flag to filers when a shipment exceeds the administrative exemption
- 30 days – rejection of ineligible shipments

# U.S. DE MINIMIS EXEMPTION CHANGES

## Proposed Changes to Current Exemptions

### Biden-Harris Administration

- Issue a proposed rule requiring additional data for de minimis shipments
- Issue a proposed rule imposing tariffs on goods that injure or threaten domestic industry or national security
- Issue a final rule requiring importers to file electronic certificates of compliance with CBP and the Consumer Product Safety Commission (CPSC) at the point of entry

### Trump Administration

- Regulatory freeze pending review from President appointee dept head
- Memorandum issued seeking input

# RISK MITIGATION

A defense of reasonable care includes, seeking guidance from the Customs Service through the pre-importation or formal ruling program; consulting with a Customs broker, a Customs consultant, or a public accountant or an attorney; or using in-house employees such as counsel, a Customs administrator, or if valuation is an issue, a corporate controller, who have experience and knowledge of customs laws, regulations, and procedures.

*United States v. Optrex America, Inc.*, 560 F. Supp. 2d 1326, 1335 (Ct. Int'l Trade 2008) (citing H. Rep. No. 103-361 a9t 120).

# RISK MITIGATION

## Enforcement activity is not limited to de minimis –

Increased valuation reviews compared to similar merchandise Manifest description compared to classification.

### Importer defense

- Develop a Reasonable Care checklist
- Seek guidance from an expertise
- Ensure you are maintaining proper records
- Classifications – periodically review CROSS ruling system
- Review entered value declared on import, can you support deductions
- Review all FTAs applied

# COST OF NON-COMPLIANCE

- Delay leading to detention, storage, or demurrage fees
- Fines and penalties for non-compliance
- Legal expenses to address disputes and protect brand reputation



~~Reactive~~  
Reactive  
Productive



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**THANK YOU**







**Chris Scalisi, CCS**

Trade Consulting Business Development Executive

[cscalisi@mohawkglobal.com](mailto:cscalisi@mohawkglobal.com)

[mohawkglobal.com](http://mohawkglobal.com)



**Karen Damon, LCB, CCS, CES**

Vice President, Regulatory Compliance

[kdamon@mohawkglobal.com](mailto:kdamon@mohawkglobal.com)

[mohawkglobal.com](http://mohawkglobal.com)