



# Professional Association of Exporters and Importers

*“Leaders and Partners in Worldwide Regulatory Compliance”*

**November 2007**

**Volume 21, Number 3**

## Post Entry Amendments (PEAs) Are the Only Game in Town

By Dan Kromat, PAEI Director

We all became very good at filing Supplemental Information Letters (SILs), but as of September 20<sup>th</sup>, the Post Entry Amendment (PEA) is the only game in town. The PEA program is being treated as an extended test for a one-year period, beginning August 21, 2007 and scheduled to end August 21, 2008. It may be extended again prior to the end date of August 21, 2008.

First of all, PEAs are filed same as SILs with some exceptions. First, PEAs, can be filed by the importer, the broker and most likely a Customs attorney. Individual PEA amendment letters should be filed upon discovery of a revenue related error in a formal entry summary where the error results in either an “overpayment or underpayment” of duties, taxes, and/or fees in the amount of “\$20 or more.” The happy news about errors of \$19.99 or less will be covered later! A PEA letter should also be filed if the error in the formal entry summary relates to anti-dumping or countervailing duties regardless of the amount of overpayment or underpayment. In addition, a PEA should be filed for any non-revenue related statistical information errors in a formal entry summary that must be reported to the U.S. Census Bureau, through Customs. These Census type errors that require an individual PEA letter are as follows:

\*Any error in the country of origin of the

merchandise, net quantity of the merchandise, visa number, and HTSUS number.

\*A value error when the difference between the entered and correct values is \$10,000 or more

\*An error relative to other charges (freight, in-  
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insurance, and all other costs and expenses incurred in bringing the merchandise from the port of export to the U.S. port, when the difference between the entered and correct values is \$10,000. or more.

PEAs must be filed at least 20 days prior to the scheduled liquidation date of each formal entry summary covered in the PEA reporting. PEAs submitted untimely in regards to the 20 day period will be rejected and returned to the filer for protest or other appropriate action. In those cases where a PEA amendments are submitted timely, but the entry summaries are not unset or processed by the scheduled liquidation date, and liquidation occurs without the benefit of the requested amendment, Customs will treat them as protests under 19 USC 1514 or, if appropriate to the circumstances, as evidence warranting reliquidation under 19 USC 1501 (CBP voluntary reliquidation).

Ah, here is the happy news for formal entries with errors, which are less than \$20.00, either in overpayment or underpayment of duties, taxes, and/or fees. There is a quarterly tracking report required to be filed with Customs. If Customs agrees with the corrections, Customs will exercise its administrative exemption authority and disregard duties, taxes, and/or fees found owing in amount of less than \$20.

Quarterly Tracking Report information must be submitted through the Customs database. The report must be filed within 15 calendar days from the last day of the quarter. The quarters are as follows: January 1 – March 31; April 1 – June 30; July 1 – September 30; and October 1 – December 31. Required information, for each correction being reported, includes: record number, entry number, filer, port, importer number, reason code (designating the reason for the change; codes are found in the Customs database), fee difference, interest (if appropriate), input date, report date, and report type. Basically, an im-

porter could use the same data elements in the PEA format (attached), but adding an additional element indicating in which quarter the error was discovered.

When the PEA program was first introduced in Federal Register of November 28, 2000, I believe importers were advised that an EXCEL type report could be used to include listed data elements required on a quarterly report, and this report would be sent to Customs on a disk. Of course, there is nothing to prevent an importer from filing the quarterly report in a hard copy. These disks or hard copies would likely go to an Entry Specialist Team at the Customs port of arrival.

Obviously, if you are filing quarterly, you will need to review your formal entries fairly quickly to timely report any errors prior to liquidation. Each report should cover all errors discovered during that quarter, unless the liquidation of the entry summaries containing those errors have become final. The quarterly report also covers certain statistical information errors that do not meet Census Bureau levels, as follows:

- \*A value error when the difference between the entered and correct values is less than \$10,000.
- \*An error relative to other charges (freight, etc) when the difference between the entered and correct values is less than \$10,000.
- \*Non-quota textile merchandise of Chapters 50 through 65, HTSUS, that is subject to a textile category number.

One more thing to keep in mind is that an individual PEA or a quarterly report must be filed at the Port of Entry identified on the formal entry. CST numbers are normally noted after the entry number on the formal entry document. Also, Customs implemented a 314-day liquidation cycle, under which the liquidation of an entry typically occurs 314 days after the date of entry.

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The PEA program is not new, but is now mandatory. Because the PEA program is mandatory and most importers have not used the program in the past, I expect that we will be answering many questions in the near future that will explain how certain situations should be handled.

The original program was posted to the Federal Register on November 28, 2000. The latest [Memorandum](#) and [Post Entry Adjustment report](#) are available for your review.

## **Export Controls – Do They Apply to Your Company**

**By Marcia L. Davis, PAEI Member**

You may not think your company requires an export license because you do not ship physical goods, services or technologies across borders; however, you may need to look at your situation again because you still might be subject to export controls even if you're not exporting tangible products. In addition to physical exports, Export Administration Regulations (EAR) applies to the transfer of "technology" transferred to foreign nationals by companies who do business in the U.S.

"Technology" is defined as "specific information necessary for the development, production, or use of a product." The transfer or release of technology includes many types of seemingly benign exchanges. It can include oral exchanges, e-mails or phone calls between colleagues discussing a new design or project. It can include visual inspection of written material, such as technical specifications, plans, and blueprints. It can also include plant/facility tours and product demonstrations.

The transfer of technology to a foreign national, even an employee of the company, is considered within the EAR as an export to the country of citizenship of that foreign national. A foreign national who main-

tains citizenship in more than one foreign country or has citizenship in one foreign country and permanent residence in another is generally considered a foreign national of the last permanent resident status or citizenship obtained.

The Department of Commerce, Department of State and Immigration and Naturalization Service work in concert to keep sensitive information out of the hands and minds of particular countries and people. Visa applicants may be monitored during the job search process, and a new employer may be investigated to determine if the new employee has been granted access to controlled technology, software or know-how. Violations even include unintended transfers, for instance, via a company's internal network server.

### **Overview of Deemed Export Rule**

Under the provisions of the Deemed Export Rule codified in the Export Administration Regulations ("EAR"), U.S.A – origin technology, software, or technical data (not publicly available) "released" to foreign nationals in the United States will be considered an "export" to that individual's home country – subject to the license requirements of the Department of Commerce for "dual use" items exported to that country, or of the Department of State where a "defense article" or "defense service" is involved. In particular, the Deemed Export Rule has significant impact on entities that employ foreign nationals.

A "foreign national" is an individual who has not been granted a permanent residence visa (i.e., a "green card") or who is not a "protected person" (e.g., political refugees and asylum holders). Technology is "released" for export when it available to foreign nationals – whether employees or third parties – for visual inspection (such as technical specifications, blueprints, or plans), or when technology is disclosed orally, or when technology is made available by practice or application under the guidance of persons with knowledge of the technology.

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U.S. entities must apply for an export license under the Deemed Export Rule when (i) they intend to release or transfer controlled technologies (restrictively classified on the Commerce Control List or Munitions Control List) to a foreign national; and (ii) export of the same technology to the foreign national's home country would require a license or other government authorization.

### **BIS Penalty Guidelines**

President Bush signed the International Emergency Economic Powers Enhancement Act (IEEPA Enhancement Act) on October 16, 2007, which significantly increases the civil and criminal penalties available under IEEPA. Under the IEEPA Enhancement Act, civil fines under IEEPA increase from \$50,000 to \$250,000 or twice the amount of the transaction at issue, whichever is greater; and criminal penalties increase from \$50,000 to up to \$1,000,000 per violation, with the potential length of imprisonment (up to 20 years per violation) remaining unchanged. Note that the civil fine had previously increased from \$11,000 to \$50,000 based on the USA PATRIOT ACT Improvement and Reauthorization Act of 2005. The new civil penalties apply to violations where an enforcement action is pending or commenced on or after the date of enactment; while the new criminal penalties apply only to enforcement actions commenced after the date of enactment.

### **Conclusion**

While it seems the simplest answer would be to just not hire foreign nationals, this approach is not a practical solution in most situations. The recommended approach would include the following:

- **Company Policy** – A published memo of management's commitment to export compliance is an essential tool for implementing meaningful controls.
- **Control Determination** – The export laws are

complex and have exorbitant penalties for violations. Determination of applicable jurisdiction and controls is the key and is therefore best addressed by designated personnel trained in export compliance.

- **Implementation of Compliance Controls** – Each company's human resources and export compliance departments must work together with documented processes to ensure compliance with U.S. export laws and U.S. labor laws. Establishing export control criteria within the recruitment and hiring processes is crucial to maintaining compliance.
  - o Newly hired foreign nationals must be effectively segregated and denied access to controlled technology until the appropriate export licenses and visas have been obtained. Hire letters issued by leading technology companies to foreign nationals frequently make continued employment of such persons conditional upon the company's ability to obtain necessary export licenses and visas.
- **Education** – Export laws may change daily and there is no grace period provided for ignorance of the law. Establishing rigorous and periodic export controls training for all responsible internal management and departments is vital to reduce potential violation risks for the company.
- **Compliance Reviews** – Regular deemed export compliance reviews are recommended to maintain compliance.
- **Documentation and Recordkeeping** – In the event of an inquiry, investigation or violation, meticulous documentation can support your position, as well as mitigate penalties through demonstrated diligence.
- **Voluntary Self Disclosures (VSD)** – In the

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event of a violation, the company should make a full voluntary self disclosure to the appropriate government agency. This will mitigate the potential liability to the company.

As the world becomes a more complex place and the U.S. workforce becomes increasingly international, the exposure to a potential violation of U.S. Export Laws likewise increases. Companies or entities that do international business or employ foreign nationals should design and implement comprehensive export compliance programs that incorporate Export Management Systems (EMS) or Export Management & Compliance Program (EMCP) principles. This includes training of export/import personnel and preparation of a chart that accurately sets forth the export control classifications and restrictions applicable to all products and technology.

## **BIS Update 2007, Day 2**

### **Plenary Session: Export Enforcement**

**(by Laura Martino as reported in \*The Daily Bugle online newsletter publication by James Barlett)**

In his opening remarks during the Export Enforcement Plenary Session at the 2007 BIS Update, Darryl Jackson, Assistant Secretary for Export Enforcement introduced the three office directors of BIS's enforcement team, including Kevin Delli-Colli, the new Director of the Office of Export Enforcement, Glenn Krizay, the new Director of the Office of Export Analysis and Ned Weant, the Director of the Office of Antiboycott Compliance.

In keeping with the theme of Update 2007, Assistant Secretary Jackson took a look at the past, present and future of export enforcement. He noted that more than 75% of all of BIS's past enforcement cases fell within BIS's three priority areas of weapons of mass destruction (WMD), terrorism and unauthorized diversion/transshipment. He also noted that BIS does not take

lightly false statements made by exporters on SEDs and AES records and that pre-license checks are an important part of the BIS enforcement strategy.

With respect to the present, Assistant Secretary Jackson noted that the Justice Department's recent export enforcement initiative is an important part of the increased emphasis on export enforcement and that the Justice Department intends to train more law enforcement personnel to understand and focus on export control-related issues.

In addition, Assistant Secretary Jackson discussed the recent increase in maximum penalties for export violations made by the IEEPA Enhancement Act that would raise penalties to \$250,000 or twice the value of the export. He also announced that BIS will generally not pursue enhanced penalties in the five circumstances set forth in BIS's announcement issued on November 1, which includes prior disclosures submitted by October 16, 2007, settlement offers made by October 16, 2007, violations where proposed charging letters were issued and cases where statute of limitations waivers have been made. (See related post published on November 1, 2007). He also noted that BIS will continue to apply revised PATRIOT act provisions in accordance with previous guidelines.

He noted that when it comes to issuing penalties for export violations, more serious penalties call for increased penalties. He also noted that voluntary disclosures will be considered to a "great weight" mitigating factor, leading to at least a 50% reduction in penalty amount. With respect to the future of export enforcement, Assistant Secretary Jackson said it is still BIS's priority to pass the renewal of the Export Enhancement Act. He also noted that is necessary to have cooperation among nations and he recognized that nearly 75 countries were represented at Update 2007.

*\* The Northrop Grumman Corporation Law Department sends the NGC Export/Import Daily Update ("The Daily Bugle") every business day to nearly 2,000 subscribers to help NGC employees, customers, and others comply with U.S. defense and high-tech trade restrictions and Federal business ethics regulations.*

## PAEI Ballot

All PAEI members have been sent by postal mail, and by e-mail a PAEI ballot for the 2008 Board of Director elections. If you have not received either of these, please contact [Karen Hebert](#).

Please cast your vote and return it by December 19, 2007. Candidate information can also be found at <http://www.paei.org/Elections/PAEIOnlineBallot2008.pdf>.

For the ballot we ask that you carefully read over the biographies of the five candidates running for the 2008-2010 term. Vote for no more than two. In order to be validated, ballots must be received or post-marked no later than December 19, 2007.

We would like to thank all five candidates for their expressed interest in running for the two open seats on the Board of Directors.

## A Word from the Treasurer

At last, the end is in insight. Eighteen years ago Cindy asked me if I could help with the formation of PAEI, a group to guide others through the new maze of rules for a new distribution license. Like a fool, I said "yes". Well, it has been 18 years of excitement and growth with a bunch of very nice people.

We now have significant reserves thanks to the good work of your Officers and Board of Directors... Dan Kromat, with Gieselle's help, will be guiding the future financial path of PAEI upon my departure... I have met many fantastic people. I can't name them all, but they know who they are. However, I must thank Cindy Shull Lakey again who had the brilliance to conceive PAEI and has been a good pal over these past 18 years. I will still be around to lend a hand where necessary.

A fond good bye,

J. Dixon Reilley

## How to Cast Your Vote!

- If mailing the Ballot, it must be placed in the self-addressed envelope that was mailed to you. The envelope must be postmarked by Wednesday, December 19, 2007, in order to be valid.
- If replying by e-mail, please only send the one page, with your choices marked, to [Khebertdms@aol.com](mailto:Khebertdms@aol.com) Please note that you must include your name and company contact information in the email.
- Hand deliver at the Annual Meeting December 6, 2007.

Each PAEI member in good standing is allowed to cast only one ballot, with up to two choices marked.

**All Ballots must be received or postmarked by December 19, 2007.**

## 2008 Membership Directory

It is that time of year again when we start to prepare for the new PAEI Membership Directory. We want to make sure that we have all current PAEI members information listed with correct contact information for your membership. If your membership is more than 30 days past expiration, and you wish to be included, please make sure to send in your membership dues. Information that is included in the PAEI Membership Directory is as follows:

**Members Name, Title, and Company Name**

**Telephone Number, Fax Number**

**And E-mail Address.**

It is very important that we have your e-mail address because most PAEI announcements and PAEI newsletters are sent via e-mail only.

Please return the PAEI membership information form that was included with your ballot, with any corrections, by December 19, 2007. Please e-mail or fax the corrections to [Karen Hebert](#) at **408-274-7611**.

# PAEI

*Cordially Invites You to Attend the*

## 20th Annual Membership Meeting

Thursday, December 6, 2007 5:30 p.m. to 7:30 p.m.

### **Biltmore Hotel and Suites**

2151 Laurelwood Rd, Santa Clara, CA 95054  
(408) 988-8411

*Come network, meet friends and other members  
Plenty of fun, food, beverages and exciting door prizes*

*No host bar*

*A no-cost event for members only*

**RSVP by fax or email by Monday, December 3, 2007**

To: Karen Hebert fax- (408) 274-7611 email – khebertdms@aol.com

Name (s): \_\_\_\_\_

\_\_\_\_\_  
Name of 2<sup>nd</sup> corporate member (no charge)\*

\*Corporate Membership Limit: 2 Attendess at no charge.

Company: \_\_\_\_\_

Phone No. \_\_\_\_\_ Email: \_\_\_\_\_

PAEI Membership No. \_\_\_\_\_ Type: Individual \_\_\_ Corporate \_\_\_

Name(s) of additional attendees: \_\_\_\_\_

**For additional attendees (co-workers, friends, spouse): \$25.00 per person to be paid by check only. Please mail checks to PAEI – Annual Meeting, 4848 San Felipe Rd., #150 PMB 107, San Jose, CA 95135. Checks must be received by Monday, December 3, 2007 for additional attendees.**

Please RSVP in advance for all additional attendees.



## Donate New, Unwrapped Gifts and Put a Smile on a Child's Face

PAEI will be hosting its First and hopefully what will become, an Annual Toy Drive this year to support InnVision.

*"InnVision is dedicated to empowering homeless and at-risk families and individuals in finding... the way home! We accomplish this by offering various levels of housing and day programs in a safe and supportive environment that promotes self-worth and independent living".*

Last year **INNVISION** served the holiday needs of over 3,000 children

The InnVision Holiday Toy Shoppe is a way for InnVision clients to take an active role in the gift-giving tradition of the Holiday Season. It affirms families, by enabling family members to select, wrap, and give gifts to each other for the holidays.

The week before Christmas, thousands of gifts are displayed in the "store", where participants can "shop" free of charge for their loved ones. Holiday Toy Shoppe organizers make sure that each child receives 2 gifts, 1 stuffed animal, 1 book, and 2 stocking stuffers. Also, each family is encouraged to select an interactive family game to share.



## Santa's Helper Corner

If you would like to participate in PAEI's first toy drive, please bring a NEW, unwrapped toy the night of the Annual Meeting. The toys will be delivered to InnVision by PAEI member, Marcia Davis.

### ***Need a gift idea?***

**Young kids:** Multi-cultural and multi-racial dolls, non-violent toys and games, learning games, art supplies, preschool development toys.

**Pre-teen/Teenagers:** Portable CD players, hand held video games, blank journals/diaries, gift certificates (food, music, movies or clothes), watches, purses, wallets, sports items, DVD's.

If you have any questions, please feel free to send an e-mail to [Marcia](#) or to [Karen](#).



### **Door prize donations**

The PAEI Board is looking to its members to help spread some holiday cheer at the Annual Meeting in December. Donations for door prizes would be especially appreciated. Prizes that have been donated in the past have included gift certificates for local stores, food baskets, embroidered PAEI tote bags, a Gingerbread House and wine bottles.

Promotional items or products from your company, such as calendars, note pads, calculators, software, etc., are also greatly appreciated.

Please either take them with you to the Annual Meeting on December 6, or send them to our Annual Event Chairperson, Lydia Bostillo, Adobe Systems, Inc., 151 Almaden Blvd., San Jose, CA 95110.

If you have any questions, please contact Lydia at 408-536-2070.



## “Complying with U.S. Export Controls”

January 15 –16, 2008

8:30 A.M. - 4:30 P.M.

**(Registration and Continental Breakfast begin at 7:30 A.M.)**

PAEI will be co-hosting "Complying with US Export Controls" with The Bureau of Industry and Security at the San Jose Holiday Inn, on January 15 - 16, 2008. This two-day Export Regulations Course is led by the professional counseling staff of BIS, and provides an in-depth examination of the Export Administration Regulations (EAR). The program will cover the information exporters need to know to comply with U.S. export controls requirements on commercial goods. Presenters also conduct a number of in-depth, “hands-on” exercises that help prepare attendees to apply the regulations in their own companies.

### Registration, Cost & Location

**Registration:** Please no telephone, or fax registration will be accepted for this event. All registrations must be paid in advance and processed using our on-line processing system, even checks at: <http://www.acteva.com/booking.cfm?bevaaid=143749> .

No registrations will be accepted after Thursday, January 10, 2008. **REGISTER NOW!** This program will sell out! NO REFUND FOR CANCELLATIONS MADE AFTER Friday, January 4, 2008.

**Cost:** \$325 (Includes continental breakfast, lunch, breaks, and all training materials for both days)

**Location:** San Jose Holiday Inn, 1740 North First Street, San Jose, California 95112. Please make your reservations directly with the San Jose Holiday Inn by calling (408) 793-3300, or (800) 315-2621. Please mention “PAEI” to obtain a discounted rate of \$135. You may visit the hotel by viewing their facilities on line, <http://www.ichotelsgroup.com/h/d/hi/1/en/hotel/sjcfs?requestid=231862>.

**Questions:** For more information on the details of the program, please call BIS at (949) 660-0144. For registration questions, please contact Cindy Shull Lakey, (360) 422-7078 [cindy@mkdenial.com](mailto:cindy@mkdenial.com).

## How Will the China Rule & Validated End-User Impact our Business?

By Jo-Anne Daniels, PAEI President & Director

PAEI hosted a Brown Bag Trade Meeting on September 20, 2007 at Atmel Corporation. The topics covered were the essential elements of the China Rule, how to screen for military end-use and the VEU program.

Ben Flowe from Berliner, Corcoran & Row L.L.P. spoke first and presented an overview of the China Rule. He outlined the end-use license requirements for 33 ECCN items if they have military end-use and reviewed the required MOFCOM (China Ministry of Commerce) end-user statements (EUS) to support the license applications for transaction valued over \$50,000. The presentation also gave some highlights of the VEU program. Mr. Flowe summed up the VEU program by asking exporters to decide if the costs of a guaranteed audit, maintaining a compliance Program, etc. will exceed the benefits or vice versa.

Richard Pettler, Fragomen, Del Rey, Bernsen & Loewy, LLP gave detailed information at the End-User Statement (EUS) required for the license application for the items with military end-use. He also clarified that the EUS is not required for VEU items or export or re-export of technology or software. Mr. Pettler also pointed out that the dollar threshold increased from >\$5K to >\$50K per transaction but for PRC no dollar minimum for controlled computers and ECCN 6A003 items. He concluded by saying that there might be delays in receiving the EUS because of MOFCOM's involvement.

Jo-Anne Daniels, Aviza Technology and Trade Resources & Associates spoke on behalf of the trade and gave Tansie Iwafuchi's presentation providing the basics of the VEU program and how it would benefit her company National Semiconductor. Ms. Daniels explained the program and its purpose which is to facilitate trade by eliminating repetitive licenses

to end-users who have an established record of exclusive civil end use activities. Ms Daniels also explained the information required to submit the opinion request for VEU. Ms Iwafuchi's presentation explained how her company intended to use the program to export specific ECCN's to its customer for incorporation into the customer's product or ship specific ECCN products to its subsidiaries in China.

Also included in the program were the VEU conditions and sample VEU checklist that her company will use to track VEU shipments. The conclusions reached were that the VEU program will reduce the amount of export licenses applications, but conversely the VEU participant will be subject to a U.S. government audit.

## Court Fines Importer \$7.5 Million For Failure To Disclose "Provisional"

### Invoice Prices To Customs

By George R. Tuttle, III,

Law Offices of George R. Tuttle, A.P.C.

Recently, the Court of International Trade fined an importer \$ 7.5 million dollars for the fraudulent importation of frozen food (see [United States v. Inn Foods, Inc., \\_\\_\\_ CIT \\_\\_\\_, Slip Op. 2007-142](#) (September 25, 2007)). The case involved a practice known as "**provisional**" invoicing. This refers to the use of any invoice that is not recognized as "final" at the time it is issued.

Inn Foods did not tell Customs or its broker that the values on the commercial invoice used at the time of entry were "provisional"; and in fact, asserted to Customs and its broker that the invoices in question were the only ones associated with the shipments.

Customs claimed that Inn Foods fraudulently filed entry documents that contained false statements in violation of 19 U.S.C. §§ 1481, 1484 and 1592.

Whereas, Inn Foods contended that its errors were

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“the result of ordinary negligence borne out of inexperience in Customs matters.”

Reviewing Customs’ false statements statute (19 U.S.C. § 1592) the Court said that violation occurs when a person makes a materially false statement or omission in connection with an entry, and that false statement or omission is the result of fraud, gross negligence, or negligence. The court concluded that the invoices were false because they misrepresent the value that was actually paid; and the misstatements were **material** because Customs relied on them as an accurate representation of the customs value when accepting the entry. The court explained that the term “material” meant any statement that “has the potential to alter the classification, appraisement, or admissibility of merchandise, or liability for duty.”

The court then turned its attention to what it considered to be the real issue in the case, the level of culpability of Inn Foods. Inn Foods argued that the invoices with the incorrect values were given to Customs negligently. Whereas, Customs asserted that it was done fraudulently.

### **Lack Of Knowledge Of The Legal Effect Of Post-Importation Price Adjustments Is No Defense**

In its defense, Inn Foods argued that there was no evidence that the company knew or understood the legal effect of the post-importation price adjustments to its grower/packers. In rejecting this argument, the court said “this argument needlessly confuses the crux of the wrongdoing” because Inn Foods knew that: (1) the prices on the subject entries were significantly undervalued, (2) the undervaluation caused a reduction in lawful Customs duties owed and (3) there was no plan or intention to correct the undervaluation.

As a result, the court ordered Inn Foods to pay \$ 624,602.55 in additional duties plus interest, and civil penalties in the amount of \$ 7,500,000.00, plus

costs, fees and interest from the date of judgment.

### **Impact Of The Inn Foods Decision**

What lesson can we learn from Inn Foods? Many companies import using a “provisional” pricing program but don’t realize it. This can occur whenever invoice values declared to Customs do not state the true “final” value of the goods imported. This can occur when goods are imported using a standard cost, which is then “trued-up” later in the year, or when goods are subject to a post-importation transfer price adjustment. Importers have an ongoing legal obligation to (a) review the correctness of information contained in invoices, and (b) to declare to the true and correct value of the goods at the time of entry. See 19 USC § 1484 and 19 USC § 1485.

In [United States v. Ford Motor Co. \("Negligence Decision"\)](#), 29 CIT , 395 F. Supp. 2d 1190 (2005), the CIT held [Ford](#) liable for the negligent misrepresentation of the value of import entries when it did not declare assists and supplemental payments, and assessed a civil penalty against Ford in the amount of \$ 11,755,825.28 (twice the LOR) plus interest.

In [United States v. Golden Ship Trading Co.](#), 25 CIT 40, 47-48 (2001), the court said that it was not reasonable for an importer to simply rely on information provided by the exporter or a licensed customs broker in connection with an importation, but had an independent responsibility to verify or ascertain the correctness of information contained in its entry documents.

Importers must recognize the importance of establishing good internal controls over customs values; and regularly review import invoices to ensure that they represent the correct customs value. This means understanding the total financial transaction and comparing the actual price paid to the declared value. If this is too difficult or the review discloses variations, the company needs to address the matter which CBP. For example, if a company imports using standard cost or an intercompany transfer price, those

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values must be independently assessed to determine their adequacy as an acceptable customs value. See Customs informed compliance publication: [Determining the Acceptability of Transaction Value for Related Party Transactions](#).

In situations where provisional pricing or other valuation issues exist, importers may participate in Customs' entry reconciliation program [[http://www.tuttlelaw.com/customs\\_material/acs\\_rec\\_on\\_guide.pdf](http://www.tuttlelaw.com/customs_material/acs_rec_on_guide.pdf)]. This program allows importers to declare provisional import values; and then, within a 21-month time period, finalize those values and deposit any additional duties owing. The program also allows importers to obtain refunds if it turns out that the import value was overstated.

If you have had provisional pricing problems in the past, your company may wish to consider taking advantage of Customs' [Prior Disclosure Program](#). Under this program, importers can voluntarily disclose to CBP the existence of the incorrect information and tender any additional duties determined to be owed. If properly done, the disclosure limits the importer's exposure, in a non-fraud case, to interest on the amount owing.

*If you would like more information on the effect of provisional invoice pricing, the use of IRS transfer pricing for Customs valuation, or how you can participate in Customs' entry reconciliation program, please contact Tuttle law Offices at (415) 288-0428 or [geo@tuttlelaw.com](mailto:geo@tuttlelaw.com).*

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The P.A.E.I. Newsletter is a publication that is written by its many members. If you have an article you have written, or have any web site that you would like to share with your fellow PAEI members in the next newsletter, please contact:

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Brittany Whiting  
Bernie Weiss

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Sherry Alvaro	Hoefler, Inc
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Ralph Northrup	Advantest Amercia Inc
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F-N. Bady	Hitachi Data Systems, Corp.
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Mary Budge	Secure Computing Corp.
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Gendy Allbrook	Apple, Inc
Nicole Malcolm	Novellus Systems, Inc
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Rosa Cortes	Qimonda
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