Professional Association of Exporters and Importers

"Leaders and Partners in Worldwide Regulatory Compliance"

December 2009 Volume 23, Number 4

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22nd Annual Membership Meeting

By Lydia Bostillo

On Thursday, December 3, 2009, PAEI held its 22nd Annual Membership Meeting at the Biltmore Hotel and Suites.

Each attendee received a raffle ticket, and door prizes were given out. The food was great, the door prizes were fabulous, and everyone had a wonderful time!

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PAEI would like to thank the following companies and individuals who donated door prizes that were raffled off:

- Neil F. Stroth & Associates
- Apple, Inc.
- FedEx Services
- Biltmore Hotel and Suites
- Trade Resources & Associates
- Loree Stevens
- Transnational Trade Services

PAEI's Third Annual Toy Drive was very successful. InnVision is the Silicon Valley's largest provider of housing and services to homeless and at-risk families and individuals. More than 16,000 people are served annually at 20 sites throughout the region. More than 100 New unwrapped gifts were brought to the Annual Membership meeting, and Tansie Iwafuchi delivered them to InnVision. Thank you to the PAEI membership for supporting this worthy cause.

We hope to see all those who attended the 22nd Annual Membership Meeting and more PAEI members at the 23rd Annual Membership Meeting in December 2010!

Thank you Lydia for another fabulous year of prizes and food. The PAEI membership appreciates all the hard work you put into making this annual event such a success!

Future PAEI Programs

By Fatima Guadamuz-Cabral - PAEI Director

As an organization formed with the goal of providing ongoing instruction and training relative to regulatory issues, exchanging information, and enhancing industries' participation in import/export control issues and policies we are asking for volunteers that want to participate in developing our 2010 programs.

With that in mind, for next year, we are working on putting together the programs you have asked for –

- 10+2- the role and support of your customs broker and freight forwarder
- Back to Basics for Exporting
- Back to Basics Importing

And many more so stay tuned or come in and be part of putting together the program you want, remember the organization is here to support you in your trade compliance role.

In addition, we are working on putting together a list of industry related programs that are currently offered by educational institutions.

If you want to volunteer with program development, give me a call at 408-593-1610.

PAEI has a LinkedIn Group

PAEI is also currently on Linkedin. If you would like to join our Linkedin group please send an e-mail to Gieselle.Perez@paei.org . Please advise which e-mail address you use on your Linkedin account and we will send you an invitation to join.

PAEI Members Only Online Forum

By Gieselle Perez, PAEI Director

PAEI has updated its website to include an open forum where membership can share ideas. The site will require members to log on and create their own alias. The intention of the forum is to allow membership to anonymously share ideas. Once in the forum members can open up topics for discussions or respond to current forums. The forum will allow membership to share ideas on compliance topics. PAEI hopes that this open forum will give membership an environment for the exchange of best practices in trade regulatory compliance.

2010 Volunteers needed!

Last year, the Professional Association of Exporters and Importers launched a campaign to attract volunteers. The campaign was a success, and the board of directors and officers would like to thank each of you who volunteered during the year. The association greatly appreciates your help.

As we prepare for the upcoming year, we would like to renew the invitation to volunteer for PAEI.

Some of the areas that always could use an extra hand are the following:

1. Writing an article for our newsletter.
2. Assisting in the sign-up process in the seminars.
3. Reaching out and connecting with potential speakers.
4. Organizing a program as the chairperson.

We do hope you consider volunteering with the association. If you are interested please contact Carla.Ventura@paei.org.

PAEI online seminar:

The Professional Association of Exporters and Importers hosted its first webinar this past September, in collaboration with the George Tuttle Law Firm. The webinar was divided in three sessions: customs compliance, export compliance, and trade security. In this article we will cover the first two webinar session.

Session 1: US Customs Compliance 101: Getting Started with George Tuttle III' s Webinar

by Laura Putnam

To kick off his three part webinar series in the arena of US import and export compliance, George Tuttle III presented a short, but comprehensive webinar on US Customs Compliance titled "Customs & Efficient Supply Chain". This is a great overview of the critical components involved in Customs compliance for importation of goods into the US.

The webinar begins with the very backbone of Customs Compliance which is Customs and Border Protection (CBP) and its strategic plan for Trade Facilitation along with the Customs laws and regulations that lay directly behind it. Featured throughout the webinar are helpful website references to show where to go to find important information and documents on the various aspects of importing such as the import transaction itself, other government agency requirements, Customs valuation, and tariff classification.

After a brief overview of CBP, this webinar goes on to cover the definition of Importer of Record and the legal responsibilities associated with importing goods into the US. It then addresses the import bond requirement for importing into the US, and the specific information provided on the importer declaration and the Customs entry requirement along with the types of Customs entries involved. Although not all of the government agencies who work with CBP on regulating imports into the US are described in this webinar, the most pervasive ones are pointed out. The section on entry documentation requirements is concluded with detailed coverage on commercial invoice requirements. The rest of the webinar is focused heavily on the other crucial areas of Customs valuation and tariff classification.

The feedback on the speaker and content of this webinar was very positive. Not many webinars are focused on import compliance, in comparison to export compliance. Although the seminar went an hour over due to the comprehensive materials included in the webinar, Mr. Tuttle III had the webinar presentation posted on his website www.tuttlelaw.com at no additional cost for the attendees to review at a later time as their schedules allow.

Session 2: A Basic Guide To U.S. Export Controls

by Carla Ventura

Mr. Tuttle gave a basic but comprehensive overview of U.S. export controls. The presentation was divided into two parts. In the first part, Mr. Tuttle explained why the U.S. controls the export of commodities and technology. He continued, presenting detailed information regarding the agencies responsible for export regulations. He pointed out the agencies' websites and highlighted information useful to the export compliance professional.

The webinar continued with coverage of definitions, replies to questions such as "What is an export license?", "Does my commodities needs an export license?", and "How do I apply for an export license?" Mr. Tuttle explained various license exceptions in the Commerce Control List, Country Chart, encryption, export violations, embargoed countries, Denied Party List screening, Electronic Export Information (EEI)

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filing, and record keeping.

The second part of the webinar was focused on the Export Management System (EMS) and voluntary self-disclosures. Mr. Tuttle emphasized that using an Export Management System (EMS), although not required by the government, is a great tool to implement in your company. The webinar presented ten steps to implement an effective compliance program. In addition, Mr. Tuttle went over the EMS guidelines posted on the Bureau of Industry and Security (BIS) website. Finally, the webinar concluded with a discussion of the penalties that an exporter could face and an overview of voluntary self-disclosures.

Thanks for providing your comments and suggestions on the webinars. Some participants had difficulty connecting or experienced other technical issues with the webinar, but overall it was a success. We will try to cover more topics in the upcoming year. This is another way to reach and to provide education, in a convenient way, to the busy trade professional.

PAEI Customs-Trade Partnership Against Terrorism (C-TPAT) Trade Program

By Jo-Anne Daniels, PAEI President

October 13th, 2009 PAEI presented its annual C-TPAT trade program and the key speakers were Ms. Bernice Conley, Supervisory Supply Chain Security Specialist, L.A./L.B C-TPAT Field Office and Janie Kyong, Intel U.S. Customs Manager.

Ms. Conley covered a range of topics from validations and staffing, through minimum security criteria revision and enforcement. There were updates regarding the minimum security criterion that is currently under review by the C-TPAT Director and Executive Director of Cargo and Conveyance Security. There was also discussion of the recommended changes that focus on oversight, accountability, consistency, continuity, and documenting processes and proposals to strengthen container security. Ms. Conley summarized her presentation discussing what is in the works for 2010 which includes company and security updates and annual self-assessment.

Ms. Kyong shared Intel's five key program components, such as, building internal partnerships, identifying risk, building taskforce structure, enhancing your program, and strengthening your partnership. She also emphasized the important C-TPAT building blocks which are: the foundation, planning, written documentation and procedures and internal recognition. Ms. Kyong concluded her program by emphasizing the importance of recognizing your team in any way possible because it encourages future partnerships and healthy working relationship which will further the overall success.

The PAEI C-TPAT program survey responses were overwhelmingly positive and some comments received in our survey remarked that Ms. Conley's update was full of excellent new information and insights and Ms. Kyong's program provided useful benchmarking data. One of the participants favored Ms. Conley's recommendation that next year PAEI provide a C-TPAT workshop. The PAEI educational committee, Directors & Officers will certainly consider the valuable comments & advice when planning next year's program.

PAEI Members Share Your Insights!

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:

Karen Hebert at Karen.Hebert@paei.org

Import Requirements Under The Toxic Substances Control Act (TSCA)

By George R Tuttle, III, PAEI Member

In August, CBFANC offered a well attended seminar on the importation of chemicals and related products. One of the important topics discussed was compliance with the requirements of the **Toxic Substances Control Act** or “TSCA.”

Section 13 of TSCA requires that any chemical substance, mixture, or article containing a chemical substance or mixture (including microorganisms and mixtures) be refused entry if it fails to comply with TSCA, or is offered for entry in violation of section 5, 6, or 7 of TSCA. This engendered a discussion about when a TSCA certificate is required and when one is not.

EPA and Customs Regulations (40 CFR 707.20 and 19 CFR 12.120, respectively) require that importers “certify” that imported chemical substances or mixtures are either:

1. In compliance with TSCA Sections 5, 6 and 7 at the time of import; or
2. Not subject to TSCA.

Customs can refuse entry of any shipment that does not have a TSCA certification. Failure to have a certificate at the time of entry can be treated as a recordkeeping violation under 19 USC 1509(a) (1) (A) (and subject to a $10,000 penalty) or a false statement penalty under 19 USC 1592 equal to 20 to 40% of the value of the shipment. The inability to redeliver a shipment that is subject to a timely notice of redelivery can also result in the assessment of liquidated damages of three times the value.

A certification may be typed, preprinted on the invoice, or otherwise included in the entry documentation, or it may be provided to Customs at the port of entry as a blanket statement before release of the shipment. If a blanket statement is on file, the invoice must make reference to it.

Both Customs and EPA regulations provide that the certification is to be signed by the importer or the agent thereof. When a Certification is required, it must state either that the chemical shipment is subject to TSCA and complies with all applicable rules and orders there under or that the chemical shipment is not subject to TSCA.

If the “chemical substances” are in a class included in TSCA jurisdiction, you must make a positive TSCA statement. A positive certification means that the chemical substance complies with all applicable TSCA regulations, including:

- Section 5 Pre-Manufacture Notification Rules
- Section 5 Significant New Use Rules
- Section 5(e) Orders
- Section 5(f) Rules and Orders
- Section 6 Rules and Orders
- Section 7 Judicial Actions
- Title IV Rules and Orders

- A negative certification means that the chemicals in the shipment are not subject to TSCA. A negative certification is applicable to:
    - Pesticides
    - Any food, food additive, drug, cosmetic or device
    - Source material, special nuclear material, or by-product material
    - Firearms and ammunitions
- No certification is required for:
    - Chemicals that are a part of articles

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- Tobacco or any tobacco product

Currently, TSCA import certifications are not required for imports of articles. If, however, a chemical product or mixture is included as a part of the article (as in a set, kit or combination article), a certification may still be required.

Chemical substances and mixtures are considered to be a part of an article only if the substances or mixtures are not intended to be removed/ released from the article and they have no end use or commercial purpose separate from the article of which they are a part. See 42 FR 64583 (December 23, 1977).

The term "article" is defined [40 CFR sections 704.3, 710.2(e), and 720.3(c)] [19 CFR §12.120(a)] as a manufactured item which:

i. Is formed to a specific shape or design during manufacture;

ii. Has end use functions dependent in whole or in part upon its shape or design during the end use, and

    - Has either no change of chemical composition during its end use or

    - Only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 12.120(a)(2); except that fluids and particles are not considered articles regardless of shape or design.

Chemical substances that are meant to be released from an article do not qualify for the article exemption. Ink in pens, glue or paint in a tube or container, and ink or toner in cartridges could all be characterized as substances meant to be released from an article, and so are not qualified for the article exemption. Therefore, importers of these substances, even in a kit with other items, would be required to make a positive TSCA certification.

Allowable changes of composition referred to in § 12.120(a)(1) are in many cases difficult to determine without clarification by EPA. Therefore, caution is advised before you and/or your client conclude that an item is excluded from the TSCA certification requirements because of § 12.120(a)(2).

You can find information on import requirements for new and existing chemicals subject to TSCA on their website at:

- http://www.epa.gov/compliance/monitoring/programs/tsca/importexport.html
- http://www.epa.gov/oppt/import-export/index.html
- http://www.epa.gov/oppt/import-export/pubs/sec13.html

Information can also be found in the EPA publication, "Introduction to the Chemical Import Requirements of the Toxic Substances Control Act (PDF)" www.epa.gov/compliance/resources/publications/monitoring/tsca/importguidejune2008.pdf (11 pp., 97.7 kb), or by contacting our office.

For assistance or additional information, please contact George Tuttle, III at (415) 986-8780 or geo@tuttlelaw.com.

George R. Tuttle, III is an attorney with the Law Offices of George R. Tuttle in San Francisco.

The information in this article is general in nature, and is not intended to constitute legal advice or to create an attorney-client relationship with respect to any event or occurrence, and may not be considered as such.

International Trade Compliance in a Down Economy: Protecting Yourself (and your company)

By Steven W. Baker, PAEI Member

During the last year, trade compliance managers and personnel have been faced with a proliferation of trade compliance requirements and expansion of government enforcement activities, while at the same time economic issues have reduced the resources available to them. Developing strategies to cope with these trends requires protecting and conserving existing knowledge and capabilities and ensuring that changes and new activities are integrated into the compliance structure.

Compliance Issues Have Multiplied

Compliance with the laws and regulations governing international trade has been a concern for American companies since the country was formed. The Third Act of the First Congress authorized the collection of customs duties, and the Fifth Act established Customs. The Trading With the Enemy Act was enacted in 1917 in anticipation of US entry into WWI.

Although trade controls have been in place for over two centuries, Federal agencies have raised both their own oversight of compliance activities and their expectations regarding the efforts required from private industry during the last fifteen years. The Customs Modernization Act (1993) significantly changed the compliance role expected from importers, implementing the "reasonable care" requirement. Customs developed substantial commercial compliance tools, including Compliance Measurement and Compliance Assessment, and continued to develop programs such as Focused Assessment and Importer Self Assessment, among others. The Export Administration of the Department of Commerce has been reformulated into the Bureau of Industry and Security, and charged with ensuring an effective export control and treaty compliance system.

Following 9/11, a whole new round of security programs demanded new levels of compliance from importers, exporters, and service providers. From beginning efforts including the Customs-Trade Partnership Against Terrorism (C-TPAT) and the 24 Hour Maritime Manifest Reporting Rule, through lengthy developing programs such as mandatory electronic export reporting through the Automated Export System (AES), to the currently being deployed Importer Security Filing (ISF or 10+2), additional requirements and restrictions have multiplied at a geometric rate.

Other Government Agencies (OGAs) have also expanded their programs or newly entered the trade arena. Existing FDA food regulations were enhanced by the Bio-Terrorism Act, with detailed Prior Notice requirements. Safety issues in food and pharmaceuticals have been joined by concerns over consumer goods, with the Consumer Product Safety Improvement Act giving significant new powers to the CPSC. Two charts depicting the amazing overlapping array of Post 9/11 and Homeland Security Programs and both US and international Advanced Data Reporting Programs have been developed by the American Association of Exporters and Importers, and can be accessed on their website, www.aaei.org, the American Trader's Guides under the Advocacy: Issues tabs.

Enforcement is Enhanced

The increase in compliance obligations has been more than matched by an increase in enforcement activity. New obligations have created new liabilities, with penalties either already in place or being phased in (ISF, Lacey Act). Some areas have seen

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substantially increased penalty liability – the International Emergency Powers Enhancement Act (IEEPA) increased potential civil liability for export violations five fold, to $250,000 per violation, and included strict liability (actual knowledge of the violation not required to establish liability); and raised potential criminal fines by a factor of 20, to $1 million per violation.

Government enforcement personnel have indicated, in response to direct questions at recent industry programs, that economic hard times do not reduce a company's legal obligations to comply with all relevant laws and regulations, and that smaller staffs and fewer resources are not an acceptable excuse for compliance failures. This is particularly true for companies that have previously demonstrated high levels of compliance; they are expected to at least maintain, if not improve, on prior performance. Ironically, the significant decrease in the number of trade transactions due to the economy increases the percentage that can be reviewed for enforcement purposes.

Resources have Declined

Despite increasing compliance obligations and enhanced enforcement operations, at most companies the resources available to ensure compliance have been reduced. In some instances the reduction has been part of overall budgetary restraints; in others the compliance activity has been targeted as a cost rather than being a revenue producing operation. Whatever the reason, some companies with extensive compliance requirements have reported staff reductions as high as 50%. Smaller companies have eliminated dedicated positions, consolidating compliance with other functions.

Resource reduction is not limited to personnel. Restraints on funds to hire outside consultants, upgrade and expand software, attend seminars and other training programs, and participate in industry associations addressing compliance issues have been put in place.

Corporate consolidations – acquisitions and mergers – also commonly result in a reduction of the personnel involved with and resources otherwise dedicated to trade compliance. While there may be – and often are – redundancies between the compliance operations of each company, the surviving department, whether all from one of the companies or a downsized combined operation, is still responsible for the range of compliance activities of both predecessors. Issues can include incompatible software and other systems, loss of institutional knowledge along with the personnel, and the added rather than reduced effort required until the operations can be integrated.

How can a trade compliance manager respond?

Trade compliance managers, faced with increased compliance obligations and enhanced enforcement, in the current economy not only have their requests for more resources denied, but their existing resources cut as well. Beyond trying to "do more with less'', and "work smarter", what is an effective response?

a. **Ensure Corporate Awareness**

It is essential to make sure that corporate officers and the Board of Directors are aware of the current enforcement landscape. This is not a new topic for compliance managers – for many years there have been programs on how to get a seat at the table and involve corporate management in compliance. Now, however, there are new penalties for new obligations, increased penalties for some existing requirements, and strict liability provisions to present. In addition, management must understand that the company has an established compliance record, and

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that it will be held to that level of knowledge and commitment, despite any economic issues the company may have. If the company decides to outsource any of its compliance activities – such as the ISF filing process – be sure to remind management that it can outsource the procedures but cannot outsource the liabilities.

b. Strengthen Formal Written Policies, Procedures, and Internal Controls

Government agencies have long stressed that the formal policies, procedures and controls of a company should be sufficiently detailed and sufficiently redundant to ensure that the company could continue to meet its compliance obligations even if most or all of its primary compliance personnel were unavailable. While not specifically focused on personnel loss due to economic conditions, this thinking clearly applies.

Companies whose updating policy has fallen behind, or that have not fully documented procedures and controls, should undertake the process as quickly as possible, particularly where personnel loss is likely. Internal Control processes must be updated to deal with situations where the position responsible for any control activity may be modified or eliminated, ensuring both that provisions for a successor exist, and that the necessary training and education will occur.

c. Capture the Knowledge of Departing Employees

Companies with good written procedures must ensure that they are updated on a timely basis, particularly when personnel are leaving who must be involved in that process. Whether through retirement, lay-offs, transfers or corporate consolidation, once those personnel are gone, any updated information – as well as any knowledge or procedures not previously captured in written form - will be lost. Separation policies should be developed to ensure that these updates can take place, either as part of the separation process or by temporary hiring back as a consultant if possible.

d. Evaluate Available Trade Tools

Good compliance managers continually update their knowledge about the ever expanding array of trade tools available in the marketplace, from software to service providers, and from stand alone compliance modules to fully integrated trade systems. When personnel loss is inevitable, automating their functions as much as possible may be the best available response. Up front costs may be acceptable to management as trade-offs for personnel reductions, or as an alternative to adding personnel to cover new compliance obligations. Great care should always be taken, of course, to ensure that the new systems adequately perform the functions that are being replaced, or meet the new requirements being imposed. Also, be sure to fully document any new systems and include them in the written policies and procedures.

e. Be Aware of Changes in Operations

Keeping abreast of changes in corporate operations, and ensuring that the trade compliance department is involved in any areas with trade impact, is of course an ongoing part of the compliance manager's duties. When operations personnel are actively seeking cost savings, however, watching for the unintended consequences of "creative thinking" becomes even more important. Handling the issues of corporate acquisitions or mergers is touched on above with regard to personnel and systems issues. A few of the other possible concerns include how different accounting and pricing procedures may affect Customs value; integration of the different Customs brokers and other service providers of the different parties; and updating or replacing various licenses, registrations,

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and reporting requirements.

Economic issues may lead companies to shift production among countries, increase sub-contracting, and outsource some items. In addition to the usual concerns over how to value goods and determine origin, there may be changes involving countries eligible for trade benefit programs, drawback possibilities, and documentary requirements. Moving production or sourcing can also impact export control issues, technology licensing, Munitions List articles, and other trade restraints. Making sure that these issues are raised early when considering changes can make the difference between an orderly transition and having to clean up major problems.

Conclusion

Meeting the challenges of increased compliance requirements and enforcement activities while maintaining a high level of ongoing compliance during a period of economic austerity requires careful use of resources. Ensuring corporate awareness, strengthening formal written polices and procedures, capturing the knowledge of departing employees, utilizing available trade tools, and having an input in operational changes can help achieve that goal.

Steven W. Baker is a former Chair of the Customs Law Committee of the American Bar Association, and has been practicing Customs and International Trade Law in the Bay Area for more than thirty years. He can be contacted at swbaker@swbakerlaw.com.

U.S. Customs Proposes Formal Regulations Requiring Use Of Statistical Sampling For Large Audits And Prior Disclosures And Use Of Offsets During Audits

By George R Tuttle, III, PAEI Member

U.S. Customs and Border Protection (CBP) published in the October 21, 2009 Federal Register a proposed amendment to its regulations, providing guidance for the use of statistical sampling in CBP audits and prior disclosure cases. The proposed regulations also provide guidance for the offsetting of overpayments and over-declarations when an audit involves a calculation of lost revenue or monetary penalties under 19 U.S.C. 1592.

The proposed change is intended to reflect in the regulations the use of statistical sampling methods as the most practical and expeditious way to accurately assess the voluminous number of entry transactions often encountered in audits in the modern commercial importation environment.

Statistical sampling is a recognized method of selecting a limited number of transactions for review and analysis. The results of the findings are then extrapolated from the smaller number of entries/transactions actually examined (the sample transactions/entries) over the larger universe of entries/transactions encompassed within the time period and scope of the audit.

There are several different methods of statistical sampling employed by CBP, including variable sampling (both physical and dollar unit sampling) and attribute discovery sampling. Additional information on CBP's statistical sampling program may be found on our website at:

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- Exhibit 6A Sampling Technical Guide (10/31/2004)
- Exhibit 6A (Appendix I) Sampling Steps (10/31/2004)
- Exhibit 6A (Appendix II) Sampling Methodology Diagrams (10/31/2004)
- Exhibit 6A (Appendix III) Sampling Methodology Table (10/31/2004)
- Exhibit 6A (Appendix IV) Sampling Plans (10/31/2004)

Other audit tools may be found at: http://www.cbp.gov/xp/cgov/trade/trade_programs/audits/focused_assessment/fap_documents/

Use Of Statistical Sampling In "Self-Testing" & Prior Disclosures

A private party conducting its own "self-test" in connection with a section 1509 Customs Audit must use a statistical sampling plan that has been reviewed and approved by the CBP audit team.

With respect to prior disclosures, the proposed regulations provide that the private party may employ statistical sampling in this review and calculation. The private party's review and calculation, including the time period and scope of the review, the sampling plan, and the sampling plan's execution, are subject to CBP review and approval. A prior disclosure will only be approved (or considered perfected) when the sampling plan and its execution are approved by CBP.

More specifically, the proposed changes provide:

1. CBP has the sole discretion concerning whether to employ statistical sampling in any given case, authorize a person being audited to perform self testing and use statistical sampling, or accept the statistical sampling used by a private party conducting an independent review and calculation of lost revenue in a prior disclosure case.
2. During the audit, at the opening conference (or thereafter in those instances where self-testing is authorized by CBP at some point after the conference), CBP will explain the sampling method and how the sampling results would be applied in determining lost revenue and overpayments (see the following section for discussion of offsets for overpayments). An audited person, including one employing self-testing, who accepts the sampling plan also **waives its ability to challenge the validity and methodology of the sampling plan at a later date**. Having accepted the sampling plan, the audited person is limited to challenging only alleged computational or clerical errors. Once CBP approves the specifics of the sampling plan, and the person being audited agrees to waive its ability to challenge the validity of the sampling plan at a later date, the audit (or self-testing) may proceed in accordance with that plan. CBP's authority to conduct the audit or to employ sampling is not dependent on the audited person's acceptance of the specifics of the sampling plan.

Use Of Offsetting To Identified Over And Underpayments Or Quantities

Prior to an amendment of section 1509(b) by Trade Act of 2002, the "finality of liquidation" rule (19 U.S.C. 1514) precluded offsetting when CBP issued a claim for lost duties, taxes, and fees under 19 U.S.C. 1592(d).

Following an amendment to section 1509(b) by Sec-

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tion 382 of the Trade Act of 2002 (the Act; Pub. L. 107-210, 116 Stat. 933 (2002) offsetting was allowed under certain circumstances. CBP's proposed rule identifies five conditions under which it will take into account overpayments of duties and fees and over-declarations of quantities or values when calculating loss of duties, taxes, or fees (referred to as "loss of revenue" in the statute) and monetary penalties levied under section 1592. These are:

1. The overpayments or over-declarations are identified by CBP during an audit (review or examination) conducted by CBP under section 1509(b);
2. The audit was completed on or after August 6, 2002, the effective date of the Act;
3. The overpayments or over-declarations relate to liquidated entries;
4. The overpayments or over-declarations are identified by CBP as having been made within the time period and scope of the audit as defined by CBP; and
5. The overpayments or over-declarations are determined by CBP not to have been made for the purpose of violating any provision of law, including the Customs laws and laws enforced by other agencies, including but not limited to, the Internal Revenue Service.

CBP notes that offsets may be permitted where the overpayments were not made by the same acts, statements, or omissions that caused the underpayments; nor are such overpayments or over-declarations limited to having occurred on the same entry or entries that evidence the underpayments or under-declarations. Offsets, however, will not be allowed for duties paid on goods for which a duty allowance or preference was not timely claimed or established at the time of entry or within the time allowed after entry under applicable law or regulation.

Finally, CBP proposes that while overpayment may be used to offset underpayments, it will not issue refunds unless the transaction in question otherwise qualifies under 1520 or 1514, and the importer has followed the appropriate procedures to obtain such refunds.

To obtain offsets, the review must be conducted under the auspices of a section 1509(b) audit. CBP notes that it may allow the offsets when self testing is performed during the 1509 audit, when the self test is subject to the CBP auditor's review and approval. Offsets would specifically be precluded when the review is conducted by an agent, import specialist, or inspection officer in the performance of his/her duties. It would also preclude consideration of offsets for Prior Disclosure.

A copy of the proposed rule may be obtained at http://www.tuttlelaw.com/customs_material/e9-25222.pdf.

CBP is soliciting comments on the proposed rule from interested parties. The comment period closes 60 days from the date of publication, unless extended.

For assistance or additional information, please contact George Tuttle, III at (415) 986-8780 or geo@tuttlelaw.com.

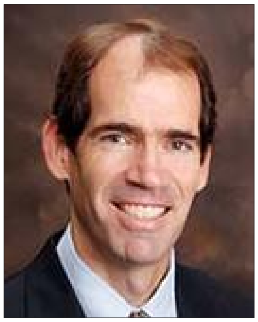
George R. Tuttle, III is an attorney with the Law Offices of George R. Tuttle in San Francisco.

The information in this article is general in nature, and is not intended to constitute legal advice or to create an attorney-client relationship with respect to any event or occurrence, and may not be considered as such.

THE JOURNAL OF COMMERCE

Top 10 Career-Busting Moves

By Linda Lexo and Rick Miller
Tyler Search Consultants www.tylersearch.com



Looking for a new job is like buying a new car: You start out excited and full of energy, and then you're overwhelmed by the process, which gives you a headache. Ultimately, you end up with a long-term commitment and some degree of "buyer's remorse."

Here are 10 factors to consider before you make the plunge to "greener pastures."

1. Compensation

We're in the money! The most exciting part of a new job is knowing you'll be earning more money. New car, new house, new toys! But just hold on. Consider the net take-home dollars and the local taxes, which could have a larger impact than your spouse's increased spending plans! Don't leave your current employer just for the money. You'll have it spent before you get it anyway. Remember the last big bump you got? How far did that go? While compensation is a huge factor, don't let it blind you into a bad move. Keep your perspective and be realistic. Assuming you are currently underpaid, don't expect a 25 percent bump even if you deserve it. Companies don't think that way and will think themselves generous in this economy offering you a 10 to 15 percent increase. If you get more than that, you are doing fine!

2. Job Title

VP of finance, director of supply chain, master of the universe. Oh, yeah! There's nothing like getting more power and authority! This is one part of your negotiations that won't cost your employer more money, but could mean a lot to you. But with authority and power comes responsibility, so expect to be working a few more hours — at least for the first few months to impress the boss!

3. Dead-End Job/Career Advancement

Story of your life! You got your JD, MBA customs brokers license and various certifications. You put your time in and moved up the ranks. But now where are you? Not much further than when you started. Does it mean you're in a dead-end job and should look elsewhere? Maybe, maybe not. Sometimes it takes a move to get the recognition — read money — for your efforts. Other times, like in this economy maybe, it could be smarter to stay put. As Dorothy said, "There's no place like home."

4. Boss

So last night's wishful thinking didn't work. The boss came in right on time and demonstrated the same lovely demeanor. It's another day in paradise … NOT! No one should have to endure a bad boss. There will always be bosses like yours lurking in the business world, so if you switch companies for this reason alone, make sure you interview your potential new boss. What kind of loyal following or turnover does he have? Find out his personality traits, either by asking him directly or asking your potential co-workers and his other direct reports. (Warning: Don't expect completely honest answers.)

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5. Hours/Flexibility

Don't count on it! Your day is hectic enough — whether it's the kids, the parents or the cat's mess. What about flex time? That and working from home a day or so a week are tricky to negotiate. Bring it up too early in the process and you are toast. Sniff around before receiving an offer, but don't push it even if the company seems receptive. Use your instincts. The best time to work this out is after an offer is on the table but before you accept it. Remember, once you accept, you have no more leverage. And, if you're rejected, no one will tell you why, so you'll never know. You'll still be at home — not working.

6. Relocation

Where am I? If you're relocating, there are important things to consider other than the cost of living. Is the new location too close to the in-laws? How is the local football team doing? Are there fast food restaurants nearby? More important, is the climate acceptable? How are the schools? The immediate neighborhood? How is the commute? Will your kids stop speaking to you? This definitely needs family time discussions before you accept the new position. Don't forget about any relocation assistance package. Sometimes these are negotiable. If none exists, it could be disguised as a sign-on bonus. Keep in mind you'll be paying it back if you ignore these Top 10 career-busting moves and leave right away!

7. Benefits

What's in it for me? Don't just look at offerings such as base salary, bonus potential, health insurance and long-term disability; also look at their total costs. For health insurance, don't just consider the monthly premium. Consider the out-of-pocket expenses for office visits, prescriptions, etc., too. With this higher stress position you may need to use it! A smaller raise could include cheaper insurance or vice-versa. Is working from home an option? What's the vacation time and is it negotiable? What about personal days, the 401(k) and retirement plan? Do other fringe benefits such as employee discounts exist? You need to re-evaluate your "total" package. Again, find this out ahead of time!

8. Company Prestige

What's in a name? Will a "big name" make you a better person? Yes — your friends and family will be impressed. Will it bring you more pride? Will it make you work harder? Only you can make that determination, but don't count out the little guys.

9. Fun Factor

What did you expect? Are you bored in your current position? Why? Will the next company offer free scuba classes? Will it provide donuts every day? Did it really say on your job application "this will be fun"? Truth be told, YOU are the one who needs to make it interesting, so if you're looking to change companies because you are bored, you'd better think again before you jump ship. Have you asked your boss for additional responsibilities, projects or offered help to a co-worker? Showing you can handle more responsibility is not a bad thing and may actually get you noticed and fill your day.

10. Counteroffers

Congratulations! You got a counteroffer and managed to get a big raise without the stress of starting a new job. Or should we offer our condolences? If you resigned and are thinking of accepting a counteroffer, beware. The odds are against you sticking around anyway and it could hurt your long-term career advancement at your employer even if you do. You were looking for a reason to move. Even if you didn't make the first move, you must have had some reason to consider that other job. You will probably be back on the market again soon. You damaged your commitment to your employer — you are no longer likely to be regarded as a "company man." You sent a message when you announced you were leaving. They need you for now, but how will they feel about you later?

The Bureau of Industry and Security

In Collaboration With The

Professional Association of Exporters and Importers

Are proud to offer:

"Complying with U.S. Export Controls"

Wednesday, April 21 – Thursday, April 22, 2010

Santa Clara, California

This two-day program is led by BIS's professional counseling staff 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 control requirements on commercial goods. We will focus on what items and activities are subject to the EAR; steps to take to determine the export licensing requirements for your item; how to determine your export control classification number (ECCN); when you can export or reexport without applying for a license; export clearance procedures and record keeping requirements; Export Management Compliance Program (EMCP) concepts; and real life examples in applying this information. Presenters will conduct a number of "hands-on" exercises that will prepare you to apply the regulations to your own company's export activities. This program is well suited for those who need a comprehensive understanding of their obligations under the EAR.

Instructors: The instructors are experienced export policy specialists, and enforcement personnel from BIS's field offices, as well as representatives from other U.S. government agencies, as appropriate. The instructors will be available throughout the seminar to answer your questions.

Location/time: Hilton Santa Clara, 4949 Great America Parkway, CA 95054. Registration and a continental breakfast begin at 7:30. The program begins at 8:30 and end at 4:30 pm.

Accommodations: Please make your room reservations directly with the Hilton Santa Clara by calling (408) 330-0001. **Reserve your room by Friday, April 9, 2010** to receive the "PAEI" discounted rate of $155. www.hiltonsantaclara.com.

Registration: Cost of this two day seminar is $380, which includes breakfast, lunch, breaks and training materials. No telephone, fax, nor checks will be accepted for registration. **All registrations for this event must be paid in advance and processed using a credit card online, at http://www.acteva.com/booking.cfm?bevaid=193242** (VISA, AMX, or MasterCard)

Last day to register is Friday, April 9, 2010. **REGISTER NOW!**

NO REFUND FOR CANCELLATIONS MADE AFTER Friday, April 9, 2010. PAEI Tax ID#:680117035. For registration questions, please contact Karen Hebert: (408) 532-7234, khebertdms@aol.com

Questions regarding topics covered should be addressed to BIS's Western Regional Office at (949) 660-0144.

WATCH US GROW!

June 2009

New

Asako Pettinger	Allied Telesis
Shinkyo Kaku	Allied Telesis
Lisa Bello	Juniper Networks Inc

Rewew

Hans Leumers	Sun Microsystems, Inc
Ann Levin	Sun Microsystems, Inc
Yvonne Angelo	JSI Shipping
Bobby Solic	JSI Shipping
Linda Rushton	Adobe Systems
Mercedes Aquilar	Adobe Systems
Lydia Bostillo	Adobe Systems
Susan Leavitt	Geometrics

July 2009

New

Karmi Leiman	Globalfoundries

Rewew

Jane Watkins	Applied Materials, Inc.
Patricia Monahan	Lansmont Corporation
Sophia Shafazand	Power Integrations
John Kandah	Power Integrations
Tania Gorie	Harris Stratex Networks
Khaled Hamade	CAL MICRO, INC.

August 2009

New

Brent Krelle	
Frank Steena	
Tony Ippolito	L.J. Walch Co., Inc.
Bill Luty	L.J. Walch Co., Inc.
Nancy Jackson	Peigo, Inc.
Ash Padwal	Peigo, Inc.
Debra Straume	GE Aviation
Ray De La Rose	EMo Trans

Renew

Dorothy Nowak	NXP Semiconductors, USA, Inc
Robert Hamilton	NXP Semiconductors, USA, Inc
Dan Haley	Hewlett-Packard Company
Dianna Cannon	Hewlett-Packard Company
Anthony Villanueva	
Uday Solanki	
Bill Butler	Teknovus, Inc.
Dan Minutillo	DCM APLC
Pedro J. Martin	Epson Electronics America
Evelyn Morales	Xilinx, Inc.
David Perez	Xilinx, Inc.
Maria Legaspi	LSI Corporation
John Manalo	LSI Corporation
Derek Hawn	Hitachi Global Storage Technologies
Michael Truong	Hitachi Global Storage Technologies
Doug Treadwell	Genesis Engineering
Vanessa Rosas	Genesis Engineering

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WATCH US GROW!

September 2009

New

Mariann E. Butch	Benesch Friedlander Coplan & Aronoff LLP
Felix Luy	
Bill Hughes	Exel Transportation
Debra C. Blalock	
Denise Walker	Navigant Consulting, Inc.

Renew

Craig L. Dimick	FedEx Epress Intl.
Jeanne M. Burns	Thornley & Pitt, Inc.
Michael Baekboel	Thornley & Pitt, Inc.
Bill White	White Consulting
Joannie Montagne	

October 2009

New

Ida Madnick	Bay Microsystems
Marlene Hilliard	Marlene D. Hilliard, J.D.
Philip Dick	Texas Instruments

Renew

Steve Shay	Novellus Systems
Creighton Chin	Communications & Power Ind.
Delia C. Padilla	SanDisk Corporation
Pilar Garcia	SanDisk Corporation
Peggy Williams	FedEx Express
Richard Tomkins	Brocade Communications Systems Inc,
Les Stearns	VLOC, Inc.

November 2009

New

Nancy Cornelius	Boston Dynamics
Linda Chafets	Boston Dynamics
Megan Corbett	
Natasha Millare-Baker	Mainfreight San Francisco
Kelly Wilson	Mainfreight San Francisco

Renew

Neill F. Stroth	N.F. Stroth and Associates, LLC
Joseph D. Lawhun	N.F. Stroth and Associates, LLC
Pamela Harbell	Renesas Technology America, Inc
Maxine Curry	Apple Inc
Gendy Allbrook	Apple Inc
Olivia R. Mendez	Communications & Power Ind. (CPI)
Carol Noack	Chevron
Margie Furey	Chevron

December 2009

New

Luke Alexander	Alexander Consultants

Renew

Diane Breithaupt	Force10 Networks
Bill Marquering	Force10 Networks

December 2009 cont'd.

Renew

Peggy Jean Nap	Applied Materials, Inc.

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WATCH US GROW!

(Continued from page 20)

Dave Liu	PLEXIS Services, Inc.
Ferry Soen	PLEXIS Services, Inc.
Wanda Gilmore	
Kelly Raia	American River International
Neil Lenok	American River International
Christina Brinkerhoff	Apple, Inc.
Lori J. Soares	Network Equipment Technologies
Aaron Yip	Monster Cable Products, Inc.
Surya Dhamija	Air7 Seas
Travis Huckaby	Verigy, Inc.
Loren Sorensen	Sorensen Associates
Cynthia Hall	
Alan A. Todi	Acer America Corp.
Joseph T. Chou	Acer America Corp.
Maria Contrestano	ViaSat, Inc.
Jill Chen	
Brian Clark	Eudyna Devices USA
David A. Castro	Eudyna Devices USA
Fianna Neng	Novellus Systems, Inc.
E. Patricia Barney	NVIDIA
Henry Pizarro	NVIDIA
Gieselle Perez	NVIDIA
Fatima Guadamuz-Cabral	Transnational Trade Services

Upcoming PAEI/BIS Events

Mark Your Calendars!

- **April 23 - 24 , 2010**
  BIS "Complying with U.S. Export Controls"
- **September 23 - 24 , 2010**
  BIS "Complying with U.S. Export Controls"

Upcoming PAEI Events

Watch for Dates and Details

- 10+2 - the Role and Support of Your Customs Broker and Freight Forwarder
- Back to Basics for Exporting
- Back to Basics Importing

Watch the PAEI Web site for these and other events, http://www.paei.org

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P.A.E. I. sponsors quarterly luncheon meetings with featured guest speakers, a bimonthly newsletter, networking and job placement opportunities.

P.A.E.I. membership represents both large and small companies in the high-technology community. Membership is open to all persons interested in personal and professional growth in the international arena. Two types of memberships are available and are valid for one year from date of payment. For more information call the PAEI Message Center at telephone (800) 930-PAEI.

Complete this application and return it along with your check. Make checks payable to: Professional Association of Exporters & Importers, P.O. Box 612743, San Jose, CA 95161-2743. PAEI's TAX ID NO: 680117035. You may also pay online for your membership at the PAEI web site http://www.paei.org/.

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City, State and Zip:____

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2nd Name:____

Title: ____

Phone: ______________________________ **Fax:** _________________________________

E-mail: ____

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