



Coalition  
Of  
New  
England  
Companies for  
Trade

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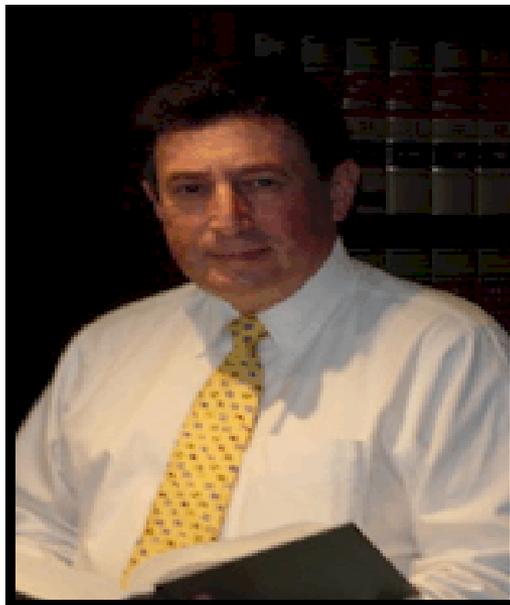
**COALITION OF NEW ENGLAND COMPANIES FOR TRADE  
17<sup>TH</sup> ANNUAL NORTHEAST TRADE & TRANSPORTATION CONFERENCE**

**PANEL ON IMPORT/EXPORT BEST PRACTICES**

**INFORMED COMPLIANCE:  
“KNOW BEFORE YOU GO”**

Presented by Richard L. Furman, Esq.  
CARROLL MCNULTY & KULL LLC  
570 Lexington Avenue, 8<sup>th</sup> Floor  
New York, New York 10022  
(P) 212-252-0004  
(F) 212-252-0444  
[rfurman@cmk.com](mailto:rfurman@cmk.com)

## Richard L. Furman



- ▶ Mr. Furman is a partner in the firm of Carroll McNulty & Kull LLC, New York and New Jersey.
- ▶ Mr. Furman specializes in providing legal advice and representation to domestic international air and ocean freight forwarders, airfreight forwarders, NVOCCs, importers, exporters, warehousemen, truckers, insurance and surety companies offering cargo and trade related underwriting and bonds and trade finance institutions. Mr. Furman's areas of expertise include motor, air, marine cargo law and regulation, cargo claims defense, import and export trade regulation, corporate and commercial advice, representation and litigation.
- ▶ Mr. Furman is Counsel to the Long Island Import Export Association and a member of the Maritime Law Association (Member, Carriage of Goods Committee); Customs and International Trade Bar Associations; Transportation Lawyers Association; Association for Transportation Law, Logistics and Policy; Conference of Freight Counsel.
- ▶ Mr. Furman has published numerous articles on cargo transportation and related issues, is a contributing author on cargo transportation security law and regulation to Sorkin, "Goods in Transit", the definitive eight volume treatise on cargo transportation law. He is also a member of the AfA "At The Bar" editorial board.

# INFORMED COMPLIANCE

- ▶ Concept formulated as part of the Customs Modernization Act, passed by Congress in 1993.
  - ▶ Imposes duties on both CBP and importers.
  - ▶ CBP is responsible to provide resources to
  - ▶ Communicate requirements importers must comply with to properly enter goods.
  - ▶ Importers responsible for providing CBP with accurate and timely classification and appraisement information.
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# INFORMED COMPLIANCE

- Informed compliance requires an importer to
- exercise “reasonable care”.
  
- No pat definition. A flexible concept that depends
- largely on factors unique to each importer and each import transaction.
- Can include:
  - ❑ Tariff classification applicable to goods;
  - ❑ Commercial relationship between shipper and importer.
  - ❑ Whether goods are subject to regulations of other government agencies.
  - ❑ Many other possible factors.

# REASONABLE CARE

CBP provides resources for importers to obtain information need to comply with import laws and regulations.

- ❑ Informed compliance publications.
- ❑ Informal, non-binding rulings on the from commodity specialists at local ports.
- ❑ Formal, binding Headquarters Rulings.
- ❑ Extensive library of Customs Decisions and Rulings available at CBP website, [www.cbp.com](http://www.cbp.com).

# REASONABLE CARE

- ▶ Burden of compliance rests on importer, which must be proactive in seeking correct information from CBP.
  - ▶ Can also seek professional guidance from customs broker, legal counsel and other import trade experts.
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# REASONABLE CARE CHECKLISTS

- ▶ Despite available guidance from CBP there is much that reasonable care implies and requires.
- ▶ CBP offers advice in the form of questions if suggests importers ask of themselves to identify possible issues they should seek more detailed information on to ensure compliance.

# REASONABLE CARE CHECKLIST

- ▶ List of questions extensive and includes numerous subparts; refer to manuscript of presentation for detailed list.
- ▶ Basic questions, by topic, include:
  - Merchandise Description and Tariff Classification: Do you know what you ordered, where it was made, and what it is made of?
  - Valuation: Do you know the “price actually paid or payable” for your merchandise?
    - Do you know the terms of sale?
    - Whether there will be rebates, tie-ins, indirect costs, additional payments?
    - Whether “assists were provided or commissions or royalties paid?
    - Are amounts actual or estimated? Are you and the supplier “related parties”?

# REASONABLE CARE CHECKLISTS

## ▶ Con't.

- Country of Origin/Marking/Quota: Have you ascertained the correct country of origin for the imported merchandise?
  
- Intellectual Property Rights: Have you determined whether your merchandise or its packaging use any trademarks or copyrighted material or are patented? If so, can you establish that you have a legal right to import those items and/or use them in the United States?

# REASONABLE CARE CHECKLISTS

## ▶ Con't.

### Miscellaneous:

- Have you assured your goods comply with other agencies requirements?
- Are your goods subject to anti-dumping or countervailing duty investigations or determinations?
- Is your merchandise subject to quota/visa requirements?
- Do you have the right to make entry under the CBP Regulations?
- Do you know the correct type of entry to be filed for your importation, e.g. TIB, T&E, consumption, warehouse, mail?