

Drafting & Improving Customs Policies & Procedures: Things You Absolutely Need to Know

Presented at I.E.Canada's 2007 Emerging Issues Conference

April 24, 2007: Toronto, ON

ROBERT G. KREKLEWETZ

LINDSAY B. MEYER

Drafting & Improving Customs Policies & Procedures: Things You Absolutely Need to Know

Presented at I.E.Canada's 2007 Emerging Issues Conference (April 24, 2007, Toronto, Ontario)

LINDSAY B. MEYER

ROBERT G. KREKLEWETZ

Drafting & Improving Customs Policies & Procedures:
Things You Absolutely Need to Know

Presented at I.E.Canada's 2007 Emerging Issues Conference
April 24, 2007, Toronto, ON

ROBERT G. KREKLEWETZ
LINDSAY B. MEYER

VENABLE LLP

MILLAR KREKLEWETZ LLP

QUESTIONS ?

Please reach us as follows:

ROBERT G. KREKLEWETZ
Millar Kreklewetz LLP

Telephone: (416) 864 - 6200
Facsimile: (416) 864 - 6201

E-Mail: rgk@taxandtradelaw.com
Web: www.taxandtradelaw.com

LINDSAY B. MEYER
Venable LLP

Telephone: (202) 344 - 4829
Facsimile: (202) 344 - 8300

E-Mail: LBMeyer@Venable.com
Web: www.venable.com



ROBERT G. KREKLEWETZ, LL.B., M.B.A.

Rob is a partner at MILLAR KREKLEWETZ LLP, with an LL.B. from Osgoode Hall Law School, and a M.B.A. from York University.

Extensive Customs, Trade & Commodity Tax Experience. Rob's practice focuses on **Customs & Trade** matters, including Periodic Verification Audits and Voluntary Disclosures concerning Valuation, Tariff Class Origin, or Marking issues, and NAFTA Origin Verification Reviews, Forfeitures, Seizures, and other NAFTA & WTO issues. Rob's practice area also focuses on **Commodity Taxes**, which encompasses all issues involving Canada's Goods and Services Tax (GST) and Harmonized Sales Tax (HST), as well the various other provincial sales taxes, including Ontario RST and Quebec QST. All elements of Millar Kreklewetz's practice include **Tax and Trade Litigation**, and Rob has acted as lead counsel in the CITT, Tax Court of Canada, Federal Court of Appeal, Ontario Court of Justice, and the Ontario Court of Appeal.

Speaking Engagements / Publications. Rob has 20 years of experience, published over **400 articles & papers**, and spoken at over **150 conferences** in the areas described above. He continues to write and speak extensively, regularly addressing the I.E.Canada at its Annual and Semi-Annual conferences, and various provincial Chapter meetings, and bodies like the Tax Executive Institute (TEI), Canadian Tax Foundation (CTF), Canadian Bar Association (CBA), and Canadian Institute of Chartered Accountants (CICA), as well as speaking at many other professional conferences.

Client Base. MILLAR KREKLEWETZ LLP has some of the best tax and trade files in Canada, and Rob advises blue chip corporate clients who are international leaders in:

- Airlines, Avionics & Aerospace
- Oil & Gas
- Chemicals & Petrochemicals
- Forestry Products
- Steel
- Drugs & Pharmaceuticals
- Medical Testing & Health Services
- Computer Hardware & Software
- Information Technology
- IT & Internet Solutions
- Banking
- Financial Services
- Leasing
- Publishing
- Public Sector
- Manufacturing
- Wholesaling
- Retailing
- Direct Mail
- Direct Selling

The February 7, 2007 edition of the National Post listed Rob as among the Best Lawyers in Canada in the areas in which he practices.

LINDSAY B. MEYER, J.D.

Lindsay is a partner at Venable LLP, with an J.D. from George Washington University, National Law Center and a licensed U.S. Customs Broker. Extensive Trade, Customs and Export Control Experience. For nearly twenty years, Lindsay has provided International Trade and Customs advice at Venable where she heads its International Practice, located in Washington, D.C., concentrating on Customs & International Trade matters, including representation during U.S. Customs Focused Assessments, NAFTA Audits, C-TPAT, ISA Programs, Detentions, Forfeitures, Seizures, other Customs-related matters. She regularly provides strategic customs and trade counseling to Fortune 100 clients, by conducting Pre-Assessment Compliance Reviews including corporate-wide, multi-location assessments and training programs, and by representing companies before the U.S. Bureau of Customs and Border Protection, the Court of International Trade, and U.S. Court of Appeals for the Federal Circuit. Lindsay has extensive experience counseling companies on compliance with export controls regulated by the Departments of Commerce, State and Treasury and performing Export Control Assessments. Lindsay has also successfully represented companies in antidumping duty investigations and reviews before the U.S. Department of Commerce and International Trade Commission and on appeal. Lindsay also advises clients on **International Transactional** matters, where she counsels on strategic sourcing, sales and distribution arrangements in the U.S. and abroad; the use of foreign agents, affiliated offices, and joint ventures.

Venable LLP's Client Base. As one of *The American Lawyer's* top 100 law firms, Venable LLP has lawyers practicing in all areas of corporate and business law, litigation, intellectual property and government affairs. Venable serves corporate, institutional, governmental, nonprofit and individual clients in the U.S. and around the world from its base of operations in and around Washington, DC. Likewise, Lindsay's clients range from multinational manufacturers to start-up enterprises from a wide variety of industries including high technology, chemical, petrochemical, pharmaceutical, automotive, avionics, space control equipment, steel, and retail industries.

Speaking Engagements / Publications / Memberships. Lindsay is also very active in business and trade associations related to her profession, and in her fourth term as Chair of the International Trade and Customs Committee for the ABA's Section of Administrative Law and Regulatory Practice, is a member of the American Association of Exporters and Importers, and was appointed by the U.S. Secretary of Commerce to the Maryland-Washington District Export Council.



ROAD MAP



Why Do You Need Them ?

Where should they Focus ?

How should They be Developed ?

Case Studies

VENABLE LLP

MILLAR KREKLEWETZ LLP

QUESTIONS ?

Please reach us as follows:

ROBERT G. KREKLEWETZ
Millar Kreklewetz LLP

Telephone: (416) 864 - 6200

Facsimile: (416) 864 - 6201

E-Mail: rgk@taxandtradelaw.com

Web: www.taxandtradelaw.com

LINDSAY B. MEYER
Venable LLP

Telephone: (202) 344 - 4829

Facsimile: (202) 344 - 8300

E-Mail: LBMeyer@Venable.com

Web: www.venable.com

THE ROAD MAP

Overview

An area which does not receive enough attention in Canada, but is now *de rigueur* in the U.S., is the establishment of comprehensive internal polices and procedures for import and export compliance.

While administratively required in the United States, requests for internal customs policies and procedures generally only arise on the commencement of an audit verification in Canada, and where they do not exist (or are less than comprehensive), that sad fact usually only result in a recommendation that "comprehensive policies and procedures be developed for import/export operations" in the business' Final Verification Report.

Things are slowly changing in Canada, however, and the Canada Customs and Border Agency's ("CBSA") recent decision in late January 2007 to begin administering AMPS on any "direct self corrections, at the conclusion of a compliance verification review or monitoring activity, where it is found that the importer had previous "Reason to Believe", can be expected to raise the stakes for complete customs compliance in all relevant program areas.

Comprehensive policies and procedures to improve and guide customs compliance are therefore the answer.

General Focus of the Presentation

The Presentation (and the balance of these materials) will focus on some of the formal and substantive requirements for developing or improving upon, effective policies and procedures in the import/export area.

**The audience is encouraged to participate !
So feel free to ask questions at any time.**

Electronic Copy of these Materials

For readers interested in keeping an electronic copy of this presentation, it can be downloaded free of charge by typing the following into your web browser:

<http://taxandtradelaw.com/easy/1615.pdf>

More Free Tax and Trade Information

For more free tax and trade information please visit us at:

www.taxandtradelaw.com

Why Make Import/Export P&P ?



CANADA	U.S.
<ul style="list-style-type: none">• No Written Requirements• Little Industry Consistency• Important Reasons Anyway	<ul style="list-style-type: none">• From Global Risk Management to Import/Export P&P• Thus, important CBP Focus• Clear Administrative Rules

VENABLE LLP MILLAR KREKLEWETZ LLP

QUESTIONS ?

Please reach us as follows:

ROBERT G. KREKLEWETZ
Millar Kreklewetz LLP

Telephone: (416) 864 - 6200
Facsimile: (416) 864 - 6201

E-Mail: rgk@taxandtradelaw.com
Web: www.taxandtradelaw.com

LINDSAY B. MEYER
Venable LLP

Telephone: (202) 344 - 4829
Facsimile: (202) 344 - 8300

E-Mail: LBMeyer@Venable.com
Web: www.venable.com

Drafting & Improving Customs Policies & Procedures

Developing Internal Controls

The following guidance is provided to assist a company in developing adequate internal controls, including policies and procedures for import/export compliance.

Please note that the information and suggestions provided below is not intended to replace proper customs advice, and that it could well change given the particular circumstances in which your business finds itself.

A Useful Framework for Import/Export Compliance

The United States Customs and Border Protection Agency ("U.S. CBP") describes the first steps in developing internal controls as follows:

Systems of internal control should contain the following components:

Control Environment: The Company establishes and maintains an environment that supports [import/export] compliance, including fostering a system that supports compliance, maintaining competent personnel, and maintaining an organizational structure that supports compliance.

Management conveys the message that integrity and ethical values must not be compromised. Management and employees have a positive and supportive attitude toward [import/export] internal controls and conscientious management of ... related operations. Management has a philosophy and operating style that is appropriate to the development and maintenance of effective internal controls for [import/export], as evidenced by the following:

- A commitment to the competence of personnel responsible for [import/export]-related activities. The company educates and trains employees about [import/export] programs that are affected by the employees' jobs. The employees should be educated on the importance of [import/export] activities related to or affected by their job and the possible impact of errors. The employees should be trained adequately to successfully perform the job.
- The company's organizational structure and the way in which it assigns authority and responsibility for [import/export] operations contribute to effective internal controls.
- The company's management cooperates with auditors, does not attempt to hide known problems from them, and values their comments and recommendations.

Risk Assessment: The Company identifies risks to the goal of CBP compliance, analyzes them for possible effects, and designs control activities to manage those risks. The company has established clear and consistent company-wide objectives and supporting activity-level objectives related to CBP activities. The following evidences risk assessment activities:

- Management has made a thorough identification of risks pertaining to CBP activities, from both internal and external sources, which may affect the ability of the company to meet those objectives.
- An analysis of those risks has been performed, and the company has developed an appropriate approach for risk management.
- Mechanisms are in place to identify changes that may affect the company's ability to achieve its missions, goals, and objectives related to CBP activities.

Control Activities: The company documents and implements policies and procedures and other control activities to ensure complete and accurate reporting to CBP as well as compliance with other CBP requirements. Procedures should include the correct reporting of information for value, classification, special trade programs, special duty provisions, and other CBP issues such as quota, antidumping duties, and countervailing duties.

Drafting & Improving Customs Policies & Procedures: Things You Absolutely Need to Know

Presented at I.E.Canada's 2007 Emerging Issues Conference (April 24, 2007, Toronto, Ontario)

LINDSAY B. MEYER

ROBERT G. KREKLEWETZ

Important Reasons For Maintaining P&P

CANADA	U.S.
<ul style="list-style-type: none">• Audit Verifications• AMPs & New CBSA Policy• Maintaining Continuity of Business Systems	<ul style="list-style-type: none">• Why Formalized P&P are the Rage• Upper Management Resistant ?• What is Customs Looking for?• Compliance: More than a Pretty Manual

VENABLE LLP MILLAR KREKLEWETZ LLP

QUESTIONS ?

Please reach us as follows:

ROBERT G. KREKLEWETZ
Millar Kreklewetz LLP

Telephone: (416) 864 - 6200
Facsimile: (416) 864 - 6201

E-Mail: rgk@taxandtradelaw.com
Web: www.taxandtradelaw.com

LINDSAY B. MEYER
Venable LLP

Telephone: (202) 344 - 4829
Facsimile: (202) 344 - 8300

E-Mail: LBMeyer@Venable.com
Web: www.venable.com

Appropriate policies, procedures, techniques, and control mechanisms must be developed and in place to ensure adherence to established CBP requirements. The following evidences control activities:

- Proper control activities have been developed and documented for each of the company's CBP activities.
- The control activities identified as necessary are actually being applied properly.
- All documentation of transactions and records are properly managed, maintained, and reviewed as necessary.
- Control procedures are reviewed and revised as necessary.

Information and Communication: The Company establishes and maintains processes to ensure that relevant, reliable information pertaining to CBP is recorded and communicated through the organization to those who need it and that information provided to CBP is complete and accurate.

Information systems are in place to identify and record pertinent operational and financial information relevant to CBP activities. Management ensures that effective internal communications take place. The company employs various forms of communications appropriate to its needs and manages, develops, and revises its information systems in a continual effort to improve communications. The following evidences effective information and communication for CBP:

- Appropriate information is identified, recorded, and communicated to management responsible for CBP activities and others within the company who need it, in a form that enables them to carry out their duties and responsibilities efficiently and effectively.
- Effective external communications occur with groups that can affect the achievement of the company's missions, goals, and objectives related to CBP activities.
- Individual roles and responsibilities for CBP activities are communicated through policy and procedure manuals.

Monitoring: The Company monitors its [import/export] activities to assess the quality of performance over time and ensure that issues and deficiencies are promptly resolved and that procedures are corrected to prevent recurrence. Monitoring will include some testing of [import/export] compliance on a periodic basis. ... Company internal control monitoring assesses the quality of performance related to [import/export] activities over time. The following evidences monitoring:

- Procedures to monitor internal controls occur on an ongoing basis as a part of the process of carrying out regular activities.
- Separate evaluations of internal controls are periodically performed, and deficiencies found are investigated.
- Procedures are in place to ensure that the findings of all audits and other reviews are promptly evaluated, decisions are made about the appropriate response, and actions are taken to correct or otherwise resolve the issues promptly.

Readers interested in exploring more about the approach taken by the CBP in the U.S. can review the CBP's views on risk assessment and internal controls, and extensive additional guidance and information, in the CBP's *Focused Assessment Technical Guides* available at:

www.cbp.gov/xp/cgov/import/regulatory_audit_program/focused_assessment/fap_documents_10_2003/

Drafting – Who, What, Where, When

The balance of the materials will be dealt with during the Oral Presentation and Case Studies.

