



# INTERNATIONAL TRADE

**Adrienne Braumiller** Partner and Founder of Braumiller Law Group, PLLC

With offices in the US and Mexico, Braumiller Law Group, PLLC, is a highly respected law firm focused on customs and international trade compliance.

This month we speak to Partner and Founder Adrienne Braumiller, who has over 25 years of customs and international trade law experience, and is a well-respected attorney in the trade community.

## **What is your take on the current status of international trade?**

International trade continues to grow in spite of any recessions and economic downturns. Companies are continually seeking new markets or sources of supply and labor. Trade appears to be recession-proof (only time will tell) but with an increase in trade comes an increase in trade sanctions and enforcement. The volume of trade continues to grow, giving Customs agencies throughout the world a real

challenge in the handling of enforcement and trade facilitation with static resources and ever increasing volume of trade.

## **What areas has Customs been focusing on lately?**

US Customs responds to pressures from several angles. Importers seek recognition and concessions for investing in compliance. Domestic parties seek protection from infringing or unfair imports. Foreign parties want increased access to US markets. Congress is still seeking to legislate major changes as to how the agency manages trade and compliance.

faces major challenges to discover the offenders. It will be difficult for US Customs to make anything other than marginal improvements in enforcement of IP and ADD/CVD. However, one huge hurdle many importers are encountering with increasing frequency involves the use of whistle blower cases under the False Claims Act, wherein a disgruntled or ex-employee informs the US Government that its employer committed fraud by failing to pay ADD/CVD duties. These types of cases are very expensive to defend given the mounds of documents that typically must be reviewed and turned over, and where the penalty is three times the

stay abreast of all these changes.

## **Are there any Customs updates coming in 2016 and 2017?**

Two of the major changes coming to trade and Customs in this country are (1) Customs moving to a new automated program for trade - the Automated Commercial Environment - and (2) new trade agreements. The latter include the Trans-Pacific Partnership which must be ratified by Congress, and the US-EU free trade agreement (TTIP), which is still being negotiated. If approved and implemented these could be the largest free trade agreements in the world.

## **Given more changes are coming, what do you currently see as common problems in some areas of compliance?**

There is a major dichotomy in this country between companies that have made a major investment in trade compliance on one hand and companies that are either uninformed, or scoff laws, on the other. Customs continues to see itself as a revenue collection agency using audits and other tools to ferret out instances of non-compliance. However, companies who invest in implementing effective internal controls and who monitor their import transactions generally fair better in such reviews than those who take the "head in the sand" approach.

## **Have you seen companies take more, or less, of a personal responsibility in the 'self-assessment arena'?**

If you are asking if more companies are recognizing the need to self-monitor or self-assess to ensure they pose "a reasonable risk to Customs" (this is what any importing company being audited hopes to achieve) - I think there are many good corporate citizens out there that understand the importance of documented internal controls that are

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One key development is that Customs has issued Informed Compliance Letters to top importers in which Customs identifies possible areas of risk and warns the targeted company to look at those areas ...or risk possible penalties. This is an additional tool the Regulatory Audit Division of Customs is using to increase compliance for companies that listen - and for those companies that don't, a warning to prepare for an audit, investigation and possible penalties.

## **What are some of the major compliance issues?**

Two main areas for customs compliance are intellectual property protection and anti-dumping/countervailing duty. US Customs has been under considerable pressure from Congress and domestic interests to improve its enforcement in these areas. Unethical importers continually seek ways to circumvent the laws and Customs

underpayment. I want to point out that False Claims Act cases are not limited to ADD/CVD matters but can be brought for other types of cases where the US Government has been defrauded. It's also lucrative to the whistleblower who stands to receive up to 30% of any penalty the Government collects.

On the export side, there are many good changes focused on facilitating trade as the US has been actively involved in export control reform and is shifting certain items from the jurisdiction of the Department of State over to the Department of Commerce. This effort has been underway since late 2009 when the President recognized that the export control system was overly complicated, contained too many redundancies, and failed to focus on the most critical national security priorities. New licensing policies are in effect that allow for streamlined exports, so the biggest challenge for exporters is to

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periodically tested to ensure such controls are working as intended. In other cases, we see companies who once had a good compliance program in place who have allowed the program to crumble into pieces because either there was no effort to keep the program current, or significant employee turn-over meant that the new team had little to no awareness or understanding of the program requirements. Regardless, I always warn companies that “you don’t know what you don’t know” meaning it’s important to evaluate your import and export activities on a periodic basis. To do otherwise is like driving with blinders on. At some point, you will crash.

**Are there other things that an importer or exporter needs to be aware of when importing to a certain country?**

That is a very open ended question. There are several things that one should be aware of when importing in general. These include not only customs duties in the country of import but also local and value added taxes. Countries have licensing and local regulatory rules that may make it difficult or impossible to import. There are also specific countries that demand that one pay attention to what the trade.gov website indicates, inclusive of any current sanctions. For example, while the latest deal with Iran could offer some new opportunities to some companies - for US companies the deal offers little change. That’s because US companies continue to be broadly prohibited from engaging in transactions or dealing with Iran or its

government. In addition, non-US persons continue to be prohibited from knowingly engaging in conduct that seeks to evade US restrictions on transactions or dealings with Iran or that causes the export of goods or services from the United States to Iran.

Another key development that could impact multinational companies is the EU creation of a new modernized union customs code or “UCC” as it is called that provides some significant changes to how goods are valued for Customs purposes, among other things. Some of those changes include doing away with the “first sale” rule in a transaction where there are successive sales in favor of the “last sale”. Just as in the US the primary basis for determining the customs value of goods is the transaction value, or the price actually paid or payable for the goods when sold for export to the customs territory adjusted, where necessary. Under the current law it is possible to use a sale earlier in the chain, if it can be determined that the earlier sale took place for export to the EU, but now the focus will be on the last sale for export to the EU. This will mean that duties payable will increase.

**“Do you see where NAFTA has improved the trade on our side of the planet? What is your opinion on Presidential candidate Donald Trump calling disaster”?**

NAFTA is anything but a disaster! Today NAFTA partners exchange about \$2.6 billion in trade per day. Instead of causing the US to lose jobs, NAFTA has created huge opportunities for American companies

and has allowed them to greatly increase their business. I give regular webinars and in-person training on the subject, and for more information, you can check out the NAFTA partner’s website [www.NAFTAnow.org](http://www.NAFTAnow.org). There is a lot of good information on the site about how much it has accomplished since its beginning in 1994. At the same time, I always stress to companies – that to successfully participate in NAFTA, training, document retention, good internal controls and periodic self-audits are critical. This is very important given the fact that at least 80% of the NAFTA Certificates of Origin, the seminal document needed so a company can import duty-free using NAFTA, is often facially invalid. This advice applies to both exporters and importers in Mexico, Canada, and the US, as the success of these claims depends on the careful administration of the Agreement throughout the supply chain.

**What is your take on potential trade with Cuba?**

There is a lot of potential for trade with Cuba, but this is going to be a slow process as it has been isolated from trade with the US for decades. There are still many restrictions on both trade and travel. Again, all updates are on the [trade.gov](http://trade.gov) website.

**Trade with China has become a political issue in this election year. Do you have any insights on this matter?**

It is true that our trade with China needs to be more balanced – our imports greatly exceed our exports. We need to recognize that China represents a huge market for US products. US automakers have realized this for some time. If we put sanctions or special duties on imports from China it could jeopardize opportunities to expand our exports to that country. The Chinese will instead buy from other countries, so we would be “shooting ourselves in the foot.”

**It’s our understanding that you and your firm have been recognized as one of the leaders in the industry by C2 based out of London ...in the category of ‘Best Regulatory Law Firm’.**

Yes, thanks, it was an honor to be recognized.

**And you were shortlisted in 2016 in the category of “Best Regulatory Lawyer in International Trade” and “Highly Commended as Best Export Control Law Firm” in 2016 by World ECR.**

Yes, we were thrilled with these developments.

**We saw a recent announcement that you had formed an alliance with The Law Offices of George R Tuttle in California...is that something you could elaborate on?**

Absolutely, this strategic relationship brings together firms with similar cultures and practice strengths that are highly complementary. This will enable us to bring a new and broader set of services and resources to our clients.

For over 25 years, the Dallas-based Braumiller team has focused on providing its clients with the highest quality advice and counseling related to international trade, customs, export control, ITAR, sanctions, free trade agreements and cross-border trade. Likewise, west-coast based Tuttle law, one of the oldest customs and international trade law firms in the country, provides similar high quality services in trade areas such as customs valuation, classification, free trade agreements, customs audits, anti-dumping and countervailing duty, penalty and seizure cases, as well as customs and trade litigation, and in diverse commodity fields, such as electronics and instrumentation, apparel, footwear, and life science products.

The union of our firms will enable us to utilize the deeper resources that Braumiller Law Group PLLC, Braumiller Consulting Group, and Tuttle law offices provide, allowing us to expand our capabilities while maintaining an efficient infrastructure for our clients. We are excited to join forces with George R. Tuttle APC, George Tuttle III in particular, a highly respected and well-known lawyer who places his clients’ interests and goals at the forefront - a commitment we both share. By joining forces, we combine talent, creativity and experience while driving innovation, efficiency and cost-savings.

Both firms are extremely proud of the quality of their lawyers and consultants, and the quality of their work, and service. So clients can expect the same focus, and dedication they have come to know from each.

**And we noticed another firm alliance in Mexico?**

Yes, we have an attorney we have been working with in Mexico for many years, Brenda Cordova, and our Of Counsel George Alfonso, located here in Dallas, helped us form an alliance with TOULET, GOTTFRIED, DAVILA Y MARTINEZ, S.C. in Mexico in order to enhance our ability to guide companies who wish to explore manufacturing in Mexico, as well as importing and exporting.

**Understood. Before we wrap this up. Can you clarify the role of Braumiller Consulting Group?**

Sure, Braumiller Consulting Group is our

non-legal entity that helps its clients achieve and maintain import/export compliance, which is a focal point in any well-structured supply chain. They work as a partner in this process, empowering companies with a compliance portfolio that includes the tools necessary to interpret global trade regulations, determine product classifications, and implement the policies and procedures that uniquely affect their business.

BCG also takes pride in offering ongoing guidance, sharing news about the very latest industry trends and the inevitable regulatory changes. Whether a client needs help identifying and solving compliance problems or boosting his or her business with smarter strategies for international trade, our consultants have an impressive track record of success as many have come to us with years of experience in their particular field of specialty. Braumiller Consulting can provide expert assistance in areas such as: Import Process & Customs, Export Process, Licensing & Agreements, Export Licensing Classification, Schedule B Classification, Import Classification under the Harmonized Tariff Schedule, Duty Drawback Recovery, Foreign-Trade Zones, Mexican Trade Guidance, NAFTA & Other Free Trade Agreements Assistance

BCG also provides training and educational services customized to client needs as well. We will be making some announcements in the first quarter of 2017 that we are very excited to share. Our new offerings will definitely be worth keeping an eye open. **LM**



For more information see [www.braumillerlaw.com](http://www.braumillerlaw.com) or email Adrienne directly [adrienne@braumillerlaw.com](mailto:adrienne@braumillerlaw.com)

