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## TRADE LAW

# Legal assistance offered to brokers and forwarders

BY GORDON PLATT

**Y**ou have been charged with making false statements in connection with an import, including errors in classification and value.

Now what?

Importers and exporters are responsible for complying with the regulations of numerous government agencies.

Pursuant to these regulations, they may be subject to penalties, forfeiture of goods and, in some cases, criminal sanctions.

Roanoke Trade Services, Inc. offers a Regulatory Defense Contract, a legal defense package which allows a customhouse broker or freight forwarder to have access to professional advice in the event they are fined or penalized by U.S. Customs, the Federal Maritime Commission or another government agency.

The program is being expanded to cover importers and exporters.

“Given the recent stance that Customs and other agencies are taking to ensure that U.S. rules and regulations are upheld, this type of product is essential to even the most-seasoned shipper or transportation services provider,” said William Florio, Senior Vice President of Roanoke Trade Services, Miami.

The product is offered in conjunction with the law firm of Sandler,

Travis & Rosenberg, P.A., which represents companies in complying with U.S. Customs and trade laws.

Its staff has represented manufacturers, exporters and importers in Customs and anti-dumping actions involving virtually every major country in Asia, Europe and the Americas, across numerous product lines.

Florio emphasized that the Regulatory Defense Program is not insurance, but instead is basically a pre-paid legal program.

Roanoke Trade Services has an insurance program with First State Management Group that provides professional liability (errors and omissions) insurance to customhouse brokers and freight forwarders.

However, the policy does not provide coverage to a broker or forwarder for incidents where they are directly fined or penalized by any of the government agencies that the firm’s clients deal with on a daily basis.

“No indemnity insurance product exists that will actually pay fines and penalties levied against our clients, or

## HOW TO AVOID PENALTIES, SEIZURES

*The following common situations can lead to penalties or seizures of goods:*

- Making false statements in connection with an import...whether through negligence or fraud ...including errors in classification or appraisal.
- Importing goods bearing a false or deceptive country-of-origin marking.
- Importing goods that infringe on another entity’s intellectual property rights, such as copyrights, trademarks and patents.
- Importing or exporting goods without a required license.
- Exporting goods with a false statement as to value.
- Transportation of hazardous materials in violation of applicable regulations, such as shipping an improperly marked and packaged fire extinguisher.
- Shipping a container that is improperly stowed.
- Importing goods which are not in conformance with the Consumer Products Safety Act.
- Importing pre-Colombian art without a permit.
- Importing merchandise made in whole or in part from an animal on the Endangered Species List.
- Merchandise which is subject to any restriction or prohibition by law relating to health, safety or conservation and which is not in compliance with applicable rules.
- Failure to timely produce a document required by 19 U.S.C. Section 1509 (a) (1) (A) when requested by Customs.

SOURCE: Roanoke Trade and Services, Inc.

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insure them against losses they sustain as a result of breaches, or alleged breaches, of government regulations,” Florio said.

“We knew it was important that our clients facing these types of situations had access to expert legal advice from a law firm that specializes in over

that particular aspect of the law," he said.

The Roanoke Trade Services product, in a nutshell, enables the purchaser, if fined or penalized by a government agency, to contact one of the attorneys at Sandler, Travis & Rosenberg, who will:

- Consult with the client in an effort to evaluate the nature and extent of the allegations or claims being made against him or her.

- Provide the client with thoughts and advice as to an appropriate course of action.

- Prepare and file a petition (limited to first petition only) for cancellation, remission or mitigation of such claim or allegation.

If additional legal work beyond this is required, the customer can continue to fight the case on his own or through a law firm of his choosing.

The customer could, for example, contract independently with Sandler, Travis & Rosenberg to see the case through to conclusion.

The program has been available to customs brokers and freight forwarders for the past 10 years.

"The plan at this time is to offer a similar product to direct importers

and exporters as well," Florio said.

"We hope to have a version of that up and running in the next 30 to 60 days."

Sandler, Travis & Rosenberg said its staff is supported by industry specialists, including former senior U.S. Customs officials, import specialists and auditors, licensed customs brokers, freight forwarders, and foreign trade zone and warehouse operations specialists.

In addition to penalties, importers, bonded warehouse proprietors and other custodians and international carriers have customs bonds that provide for liquidated damages in the event of a breach of any of the conditions of the bond.

Florio said examples of common problems include:

- Failure to timely file an Entry Summary or to pay duties, taxes or charges.

- Failure to provide documents and evidence required for entry.

- Failure to redeliver merchandise to Customs' custody that has been released by Customs and later determined to not be entitled to entry into the commerce of the United States.

- Acceptance by a bonded ware-

house proprietor of merchandise which is not authorized under the regulations.

- Failure of any bonded merchandise custodian to comply with all regulations regarding receipt, carriage, safekeeping and disposition of such merchandise.

- Failure of a bonded warehouse proprietor to maintain proper records or to properly close out files after the last withdrawal on a given warehouse entry.

- Misdelivery by a bonded carrier or warehouse proprietor.

- Commingling non-bonded goods with bonded goods in a bonded warehouse.

- Shortages or overages in a bonded warehouse's inventory.

- Failure to declare currency or other monetary instruments in excess of \$10,000 upon entering or leaving the country.

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