



Section 2

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2.1 *Not in use*

2.2 *Not in use*





2.3 Compliance Management Workbook

The Compliance Management Workbook (CM Workbook) is a working tool designed to assist the regional compliance verification officers (CVO) in conducting compliance verification reviews and recording verification results. It is an Excel based workbook comprised of several Excel worksheets. Each worksheet represents a specific program and includes the data elements required to enable the regional CVO to verify specific program requirements.

The program worksheets can be used independently, allowing a CVO to work from a remote location, or within the compliance verification office. Common data elements are shared between each worksheet to eliminate duplication of work and manual errors. Also, visual indicators are built into the worksheets that inform the CVO of missing information or issues of concern, which must be incorporated/evaluated before finalizing the compliance verification. Compliance results are automatically calculated by program specific and simultaneously displayed in a report subsequently provided to the individual client, once the compliance verification is completed.

These same results are transmitted to HQ, where they are stored in a database awaiting trend analysis by the Research and Analysis Unit and the individual program areas.

The results of the compliance verifications are used to assess program risks and outline the causes and reasons for non-compliance. This same information is then used to identify trends and recommend appropriate corrective action that will improve overall compliance over time.

The CM Workbook helps to standardize the verification process and bring consistency in the reporting of compliance verification results. As new program issues are brought forward, the CM Workbook will be adjusted appropriately. It will also serve as the prototype for the national compliance verification system, which is currently in the early planning stages.





2.4 Multi-Program and Single Program Process Overview

The verification process has been developed to support both Multi-Program Verification and Single Program Verification:

- **Multi-Program Verification (MPV)**
 - Traditionally referred to as Compliance Assessment Review (CAR)
 - Involves the on-site, multiple program verification of a client's compliance
- **Single Program Verification (SPV)**
 - Traditionally referred to as New Verification Process (NVP)
 - Driven through priorities assigned through HQ from other program lines and regionally generated cases
 - Primarily done through Desk Verification
 - On-site verification, if deemed necessary

IMPORTANT!

This...	Replaces...
Multi-Program Verification (MPV)	Compliance Assessment Review (CAR)
Single Program Verification (SPV)	New Verification Process (NVP)

The process steps for on-site verifications under both single and multi-program verifications have commonalities.

While the steps in the MPV and SPV processes must all be followed, responsibilities may vary between regions, depending upon organization, structure and client demographics.





Quality Assurance

Quality Assurance has been embedded into the verification process through a series of checklists, for the use of managers and CVOs. These checklists ensure that key steps are completed at each stage of the process. In addition to this, standard templates have also been included as “Exhibits” which ensure that required information in certain forms and other documents is properly captured during specific steps of the verification process.





2.5 Verification Key Phases and Steps

The following outline shows key process steps and major activities within each phase. Activities may vary by type of verification and in some cases (e.g. Desk Verifications for Single Program) certain steps may not be required. Section 3 of this manual details all of the specific phases and activities.

Pre-Planning

- 0.1 Research and confirm commodity information
- 0.2 Send notification e-mail to stakeholders
- 0.3 Confirm client location, commodity information, location and availability of records
- 0.4 Confirm viability with manager

Planning Phase

- 1. Open Client file
- 2. Notify the Client
- 3. Research client importing history
- 4. Verification Planning Memorandum

Execution Phase

- 5. Prepare and perform opening meeting
- 6. Conduct systems review and walk-through
- 7. Select or review samples for verification
- 8. Complete the verification, analysis and evaluation of the programs

Reporting Phase

- 9. Report results to client
- 10. Complete National reporting requirements

Follow-Up Phase

- 11. Identify File for Follow-up





2.6 Roles and Responsibilities

Introduction

This chapter sets out an overview of the main roles and responsibilities of those involved in Post-Release Compliance Verification in the regions and Headquarters.

Compliance Verification Officer

Compliance verification officers (CVOs) can work alone, or as part of a team with other officers. The organization of teams within each region varies according to regional requirements.

Responsibilities include:

- administer Trade Compliance Verification programs by planning, coordinating and conducting domestic and foreign reviews, systems reviews, and verifications of clients' records, supporting documentation and manufacturing processes, using different methods of verification (e.g. on-site, desk, single program or multi-program), to determine the degree of compliance with CBSA's administered legislation, trade programs, and eligibility for special incentive and duty relief programs;
- issue decisions, rulings and assessments, including penalties, resulting from verification of the tariff classification, origin, value for duty of imported goods, or other trade programs and recommending the approval or revocation of clients' authorizations to participate in various programs;
- research (e.g. legislation, policies, procedures) and analyze commodity sectors, client trading practices, historical trends, trade data and commodity risk values to determine risks of non-compliance;
- analyze and evaluate referrals from a variety of sources (e.g. border services officers, competitor complaints and other regions) to determine risk, appropriate action or to provide technical advice and verify the integrity of trade data;
- discuss and negotiate technical and contentious issues, as a part of verifications with clients, their service intermediaries and legal representatives and negotiate interest and re-payment, re-assessment and penalties;
- promote voluntary compliance with Canada's trade and border legislation by increasing client awareness of their rights, entitlements and obligations under the law, as well as the consequences of non-compliance; and
- provide feedback as to review results, to the Targeting and Monitoring Unit, referring officers, and management, where required.





Electronic Computer Audit Specialist (ECAS)

Responsibilities include:

- download the client's data to the verification data base;
- perform the auditor's functions when necessary; and
- prepare working papers for activities completed.

Compliance Verification Manager

Responsibilities include:

- supervise, plan and organize the work of CVOs;
- develop and apply risk management methodology for programs, commodities and industry sectors;
- provide technical guidance to CVOs on program issues;
- contribute to the development of compliance verification program legislation, policy procedures and standards and implement same;
- exercise delegated financial authorities and allocates human and financial resources within the unit;
- work with representatives of regional and international trading communities, other business lines within the CBSA and other government departments to promote improved compliance; and
- participate on various committees to set priorities, manage risk, and conduct special projects.

Regional Client Services Officers

Responsibilities include:

- promote compliance with Canada's trade and border legislation by increasing client awareness of their rights, entitlements and obligations under the law, as well as the consequences of non-compliance;





- assist Canadian business in maximizing their competitive position, while concurrently promoting their understanding of trade and enforcement requirements;
- analysis of import and export documentation with respect to release and accounting documentation along with promoting awareness of program deliverables to internal clients; and
- ensure appropriate levels of service and standards of service are provided.

Compliance Management Division (HQ)

Client Services Unit

Responsibilities include:

- provide functional direction to the regions on the delivery of the client service program, and those initiatives which have been identified as priorities;
- ensure priorities are well defined and are suitably documented to provide background, objectives, measurability source materials; and
- ensure regional needs and perspectives are considered when any changes impact regional operations.

Post-Release Verification, Learning and Support Unit

Responsibilities include:

- consult with HQ program areas, regional Compliance Verification areas, and other government departments to develop, implement and maintain nationally consistent verification processes;
- provide functional guidance and technical direction to regional management and field staff, including assisting in verification planning, on-site and desk verifications, and to develop operating practices and procedures;
- provide support to all regional compliance verification officers and teams;
- assist in the training and skills development of regional compliance verification officers;
- develop, implement, evaluate and monitor time standards for verification;





- develop, implement and maintain verification programs and tools to ensure national uniformity in the verification function; and
- provide advice, guidance and policy direction regarding the sections of the *Customs Act* relating to importer's records, authority to conduct verification and the recovery of expenses.

Research and Analysis Unit

Responsibilities include:

- Identifying national priorities (commodity- or program-specific) for consideration by the Risk Assessment Committee
- Analyzing non-compliance trends through:
 - a) national priorities and
 - b) measurement
- Determining sampling methodologies for:
 - a) companies (HQ) and
 - b) transaction lines (regions)
- Providing the requirements for the development of an automated system that will manage and report on compliance levels; i.e., Compliance Management System/Statistical Analysis Software (CMS/SAS)
- Reviewing, importing into the database, and disseminating Status and Time Standards Reports on companies selected for post-release verification
- Maintaining the CMS database
- Developing, updating, and maintaining the Compliance Management (CM) Workbook for Multi-Programs (MP) and the CM Workbook for Single Programs (SP) for reporting the results of post-release verifications
- Developing the CM workbook manuals for:
 - a) multi-programs
 - b) single programs, and
 - c) coordinators, as well as training material
- Preparing reports on national compliance levels for senior management and Parliament.

Origin and Valuation Division (HQ)

Responsibilities include:

- accountable for the development and implementation of national policies and interpretations related to the origin and valuation of imported goods entering Canada, and the assessment of the impact of legislative proposals and international trade agreements;





- responsible for ensuring that conformity is maintained through the monitoring and quality assurance of regional rulings and interpretations;
- responsible for managing the publication of policies; and
- provide functional guidance and direction to the field concerning origin and valuation policies to ensure national and international conformity.

Tariff Policy Division (HQ)

Responsibilities include:

- monitor quality assurance for the National Customs Rulings program for tariff classification;
- manage the quality of the Technical Reference System;
- develop classification policy regarding the interpretation of the *Customs Tariff* and the Harmonized System;
- develop and deliver functional guidance and training seminars on tariff classification and the Harmonized System;
- support the development of CBSA legislation and programs;
- Administer and advise Canada's position on tariff classification issues before the World Customs Organization, North American Free Trade Agreement, World Trade Organization and other international organizations; and
- support and liaise with other government departments (OGDs), such as Foreign Affairs and International Trade Canada and the Department of Finance, on trade issues involving tariff classification.

Trade Incentives and Refunds Unit (HQ)

Responsibilities include:

- develop, implement and evaluate CBSA national policies related to trade incentive programs;
- advise and orient both regional and HQ officials regarding policy issues in the various trade incentive programs;





- identify training needs and plan, develop and deliver training material and courses;
- develop quality assurance programs on behalf of Trade Policy and Interpretation Directorate; and
- develop and administer legislative framework and associated interpretive policies that contribute to an effective and responsive CBSA trade administration related to the Trade Incentive Programs.

Duty Deferral Unit (HQ)

Responsibilities include:

- support the development of CBSA legislation and programs and develop and administer legislative framework and associated interpretive policies that contribute to an effective and responsive customs trade administration related to duty deferral;
- support and liaise with other government departments (OGDs), such as Foreign Affairs and International Trade Canada and the Department of Finance, on trade issues involving duty deferral;
- develop, implement and evaluate national policies related to duty deferral;
- advise and orient both regional and HQ officials regarding policy issues in duty deferral;
- identify training needs and plan, develop and deliver training material and courses on duty deferral and related programs; and
- produce and maintain the Consolidation of the *Customs Tariff* and its schedule with input from the Department of Finance and Statistics Canada.

Statistics Canada

Responsibilities include:

- collect, compile, analyze, abstract, and publish statistics on the social and economic well being of Canada and Canadians including merchandise trade statistics;
- work with the CBSA to fulfill its obligation under the *Statistics Act* and the subsequent 1993 CCRA-Statistics Canada (STC) Memorandum of





Understanding to produce high quality merchandise trade statistics on a timely basis;

- collaborate with CBSA in the development of the compliance measurement program, post-release verification policies and processes;
- provide guidance to compliance verification officers concerning STC elements; and
- support CBSA's programs aimed at increasing the accuracy of trade data.

2.7 Verification Standards

Verification standards ensure national consistency and quality and are specific to the CBSA environment. They provide a context for the verification processes described throughout this manual. Officers are expected to support and apply these standards to all aspects of the verification.

The Verification Standards are an adaptation of Canadian Generally Accepted Auditing Standards and the internationally recognized Codification of Standards for the Professional Practice of Internal Auditing from the Institute of Internal Auditors.

The standards provided herein are not intended to replace the Code of Ethics and Conduct that apply to all employees.

Officers and management are expected to support and apply professional standards of conduct while performing post-release verification activities. Here are the main verification standards to be followed when performing any type of post-release verification:

1. Regional managers should ensure that the verification is performed by CVOs who have adequate technical training and proficiency in compliance verification.

Only officers qualified to determine compliance in accordance with the relevant legislation should perform post-release verifications. Qualified means that the officers conducting the verification must have sufficient knowledge and understanding of the verification objectives and the ability to satisfy those objectives.





2. Verifications should be adequately planned, executed, supervised and reviewed.

What is found to be adequate is to do the work considering the verification objectives, to obtain all the information possible out of every possible source from the client, to consider the clients compliance history and to get the proper expertise involved (computer verification specialists, auditors, client services, etc). To assist in achieving this, a documented verification planning memo should be prepared, and when necessary, the manager's and file completion checklists should be completed

3. Verifications should be conducted, allowing due consideration for the company's business circumstances.

Due consideration, in this case, means to respect the clients ongoing business activities. For example, a post-release verification should not be planned during a peak-operating season for the client.

4. Verifications should be conducted with objectivity.

This means that the officers should not start a verification with a favourable or unfavourable prejudice towards the client.

5. Sufficient and appropriate verification information should be obtained by inspection, observation, inquiry, confirmation, computation and analysis, to afford a reasonable basis upon which to support the findings, conclusions and recommendations of the report.

Sufficient relates to the quantity of verification information that was gathered, while appropriate refers to the quality of that information. The question, therefore, is whether or not enough verification information was collected considering the quality of the information available. The more relevant and reliable the information is, the less the officers need to collect.

6. Officers should perform the verification with professional due care.

The compliance verification officer is expected to fulfill their duties diligently and carefully. This includes consideration of the completeness of the working papers, the sufficiency of the verification information, and the appropriateness of the final report.





7. Verifications should be completed and a report presented to the client within a reasonable time.

For all on-site verifications (SPV or MPV), an interim report should be provided before giving a final report. A verification is a long process and the question often asked is "how long should it take?" Time standards have been developed, as a general guide for how long a verification should take; however, factors come into play that can affect each case differently. The size of company, the level of complexity of the business systems and level of cooperation offered by the client are all examples of factors that could affect the time needed to complete the verification.

The officers should, while waiting for information from the client, make the best use of their time. They should work on other parts of the verification, whenever possible. For example, they can work on the indexing and cross-referencing of the file, update the outstanding issues working paper and the planning memorandum or input data into the reporting mechanisms available, for example, CM Workbook, TRS, BARKS etc.

Bear in mind that clients may face delays in supplying information requested by the officers. To avoid this, it is suggested to give reasonable deadlines when asking for information and to follow up on information requests.

8. Verifications should be conducted in a transparent manner.

As part of our mission to encourage compliance with CBSA administered legislation, post-release verifications are to be executed in an open and transparent manner. Communication and co-operation between the CBSA and the client is paramount, if the verification is to be successful. The officer in charge of the case should be in contact with the client on a regular basis, to keep them informed of verification progress and results. In addition, the client's response to the verification results is included in the final report.

Reporting Standards

Reporting is the manner by which CVOs communicate the results of verifications to the client, senior management, and to Compliance Management Division in HQ.

Reports should include the purpose, objectives, scope, and summary of errors, as well as applicable conclusions, requirements and recommendations.

Reports should be accurate, objective, clear, concise, constructive, complete and timely.





The communication of findings to the client is an ongoing process, which takes place throughout all phases of the verification. Findings may be communicated by exit interviews, CM Workbook program sheets, letters and final reports.

It is important to remember the main user of the report is the client.

Standards of Conduct

- I. CVO's shall exercise honesty, objectivity, and diligence in the performance of their duties and responsibilities.
- II. CVO's shall exhibit loyalty in all matters pertaining to the affairs of the government and shall not knowingly be a party to any illegal, discreditable or improper activity.
- III. CVO's shall refrain from entering into any activity which may be in conflict with the interest of the government or which would prejudice their ability to carry out objectively their duties and responsibilities.
- IV. CVO's shall not accept or solicit any gifts, hospitality or other benefits that may have a real or apparent influence on their objectivity in carrying out their official duties or that may place them under obligation to the donor. This includes free or discounted admission to sporting and cultural events arising out of an actual or potential business relationship directly related to the public servant's official duties. There are benefits that are permissible, please refer to the Values and Ethics Code for the Public Service, for information on Gifts, Hospitality and Other Benefits.

http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve1_e.asp - Toc46202807
- V. CVO's shall undertake only those services, which they can reasonably expect to complete with professional competence.
- VI. CVO's shall be prudent in the use of information acquired in the course of their duties. They shall not use confidential information for any personal gain nor in any manner that would be contrary to law or detrimental to the welfare of the government.
- VII. CVO's, when reporting on the results of their work, shall reveal all material facts known to them which, if not revealed, could either distort reports of operations under review or conceal unlawful practices.
- VIII. CVO's shall continually strive for improvement in their proficiency, and in the effectiveness and quality of their service.





- IX. CVO's, in the practice of the profession, shall be ever mindful of their obligation to maintain a high standard of competence, morality and dignity.





2.8 Records

The following information pertains to importer records relating to the importation of commercial goods.

1. Section 2 of the *Customs Act* (hereafter referred to as the Act) defines a record as "...any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device."
2. The legislative authority that requires a person to maintain records for imported commercial goods is subsection 40(1) of the Act. This authority also requires, for example, that these records be made available to an officer upon request, and to answer any questions in respect to these records truthfully.
3. Records must be kept in such a manner as to enable an officer to verify or obtain the information on which a determination was made of the duties paid, payable, deferred or remitted.
4. Records may be kept electronically, provided the medium can be related to the supporting source documents or hard copy documents, and is supported by a system capable of producing accessible and readable copy.
5. The *Imported Goods Records Regulations* state that records shall be kept for six years following the importation of the commercial goods. These regulations specify that records must be kept, with respect to imported commercial goods that relate to the following:
 - a) the origin, marking, purchase, importation, costs and value of the commercial goods;
 - b) payment for the commercial goods;
the disposal of the commercial goods in Canada; and
 - c) any application for an advance ruling made under section 43.1 of the Act in respect of the commercial goods.

The *Imported Goods Records Regulations* may be found at the following link:

<http://laws.justice.gc.ca/en/C-52.6/SOR-86-1011/85681.html>

6. Records relating to goods released free of duty, or at a reduced rate must be maintained as well, including records that show duties were paid as a result of a diversion.
7. Additional information may be found in Customs Memorandum D17-1-21, Maintenance of Records and Books in Canada by Importers.





Records Maintained at a Location Other Than Place of Business in Canada

8. Records must be kept at the person's place of business in Canada or at any other place that may be designated by the Minister.
9. It should be noted that the requirement to keep records and to make them available for review, if requested, is equally applicable to resident and non-resident importers. In the case of importers who do not have a place of business in Canada, a customs broker or other similar authorized agent may keep the appropriate records, provided permission is obtained to do so.
10. Requests for permission to maintain records at locations within Canada (other than an importer's place of business) are to be forwarded to Regional Director for CBSA where only one region is involved. If the request involves more than one region, the request is forwarded to the Director, Compliance Management Division within Headquarters.

Maintenance of Records Outside Canada

11. Importers may be authorized to maintain records outside Canada (currently limited to a place within the United States), by completing an Agreement to Maintain Books and Records Outside of Canada (hereafter referred to as the agreement, included at the end of this sub-section) and forwarding it for approval to the Compliance Management Division, Post-Release Verification, Learning and Support Unit, 150 Isabella Street, 5th floor, Ottawa, Ontario K1A 0L8.
12. This is an administrative agreement between the CBSA and the importer. Its purpose is to record and set out the location and availability of records for verification purposes. The importer agrees that records will be made available in Canada upon request (at a location to be determined should the records be requested), or will bear the full cost and expenses (excluding salaries) of one or more officers from the CBSA traveling to the location, where records are to be maintained.
13. Compliance Management Division in Headquarters maintains a log of those importers that have been authorized to keep records outside Canada.

Notification Requirements When Conducting Non-Resident Verifications

14. The customs authorities of foreign countries must be notified of verification activities being conducted in their country. Beyond the recognition of national sovereignty, it also uncovers situations where the client is subject to planned or ongoing verification within that foreign country.





15. All foreign government notifications for single and multi-program verifications are coordinated by the Compliance Services Unit (CSU), Origin and Valuation Division within Headquarters. Notification guidelines have been written for the various types of verifications that may be undertaken, and are available at the following link:
- http://infozone.rc.gc.ca/english/r3510200/tpionline/notif_guide_e.pdf
16. As soon as it is determined that an on-site verification outside Canada is required, a notification letter is to be completed, using the template found at the above link.
17. The letter is to be faxed to:
- Manager, Compliance Services Unit
 - Origin and Valuation Division
 - Admissibility Branch
 - Facsimile: 613-954-5500
18. The dates for the proposed visit should be at least 35 days after the date the letter is forwarded to the Origin and Valuation Division (OVD), Compliance Services Unit (CSU).
19. The OVD will fax the letter to the foreign government to ensure they are advised of the intention of the CBSA to visit their sovereign territory. The OVD will also send the CVO a confirmation that the letter was received and transmitted to the foreign government.
20. The foreign government has five working days to raise any concerns regarding the proposed verification visit. For NAFTA purposes, D-Memorandum 11-4-20, Free Trade Agreement Origin Verification Procedures, states that the foreign customs administration has 15 days to respond, however it was agreed at a trilateral NAFTA Sub-Group meeting that for efficiency purposes, a 5-day limit would be sufficient for a customs administration to identify and raise any concerns.
21. After the 5 working days have elapsed and no concern or request for postponement has been raised, the CVO may then formally advise the company of the verification visit by issuing the letter.
22. If the date of the proposed visit changes for any reason (e.g. at the request of company officials), the CVO should notify the OVD in order that the foreign customs administration or embassy is advised of this change, and another 5 working day period is granted to the foreign customs administration for their consideration of the revised date(s).





Administrative Monetary Penalty System

23. The Administrative Monetary Penalty System provides for specific contraventions that address non-compliance with the legislative and regulatory record keeping provisions explained in this document.

Legislative References

Customs Act

Record

2. (1) “record” means any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device.

Electronic Records

2(1.3) Every person required by this Act to keep records who does so electronically shall retain them in an electronically readable format for the prescribed retention period.

Importers’ Records

40.(1) Every person who imports goods or causes goods to be imported for sale or for any industrial, commercial, institutional or other like use or any other use that may be prescribed shall keep at the person’s place of business in Canada or at any other place that may be designated by the Minister any records in respect of those goods in any manner and for any period of time that may be prescribed and shall, where an officer so requests, make them available to the officer, within the time specified by the officer, and answer truthfully any questions asked by the officer in respect of the records.

Regulations

Imported Goods Records Regulations

The following is an excerpt from the Imported Goods Records Regulations:

2. Every person who is required by subsection 40(1) of the Act to keep records in respect of commercial goods shall keep, for the period of six years following the importation of the commercial goods, all records that relate to:

- (a) the origin, marking, purchase, importation, costs and value of the commercial goods;
- (b) payment for the commercial goods;
- (c) the disposal of the commercial goods in Canada; and
- (d) any application for an advance ruling made under subsection 43.1 of the Act in respect of the commercial goods.





3. The records referred to in section 2 may be kept on machine-sensible data media if the media can be related back to the supporting source documents and are supported by a system capable of producing accessible and readable copy.

4. Where a person, other than a person referred to in section 3.1, has not kept records in accordance with these Regulations, preferential tariff treatment under NAFTA or preferential tariff treatment under CCFTA, as the case may be, may be denied or withdrawn in respect of the commercial goods that are subject of those records.

5. Where a person, other than a person referred to in section 3.1, who is required to produce records in accordance with subsection 43(1) of the Act fails to do so, preferential tariff treatment under NAFTA or preferential tariff treatment under CCFTA, as the case may be, may be denied or withdrawn in respect of the commercial goods that are subject of those records.

Imported Goods Records Regulations can be found at the following link:

<http://laws.justice.gc.ca/en/C-52.6/SOR-86-1011/85681.html>

Administrative References

- Agreement to Maintain Books and Records Outside of Canada
(found on next page)
- D17-1-21, Maintenance of Records and Books in Canada by Importers





AGREEMENT TO MAINTAIN BOOKS AND RECORDS OUTSIDE OF CANADA

We, (company name in full)

undertake that our books and records will be made available in Canada upon request (at a location to be determined should the records be requested) or that we will bear the full cost and expenses of one or more officers from the Canada Border Services Agency (CBSA) travelling to: (complete company address & phone number where records will be maintained, along with zip codes & or postal codes).

Address: _____

_____ Phone #: _____

Mailing Address (if different from above):

This Agreement may be revised provided modifications are accepted by the company and the Canada Border Services Agency. Such modifications shall be in writing.

CBSA Business Number of named company: _____

We have read, understood and agree with the foregoing.

Name (Please Print)

_____ Title: _____

Signature: _____ Date: _____

Name (Please Print)

_____ Title: _____

Signature: _____ Date: _____

If applicable, name of customs brokerage providing this application and agents name and telephone number.

Customs Brokerage company: _____

Broker's Name & Phone Number: _____

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MAINTENANCE OF BOOKS AND RECORDS OUTSIDE OF CANADA – Instructions for form

Canada Border Services Agency (CBSA) may authorize certain importers to maintain records outside Canada provided they submit this "letter of undertaking". The purpose of this document is to record and set out the agreement made between the company and Canada Border Services Agency, concerning the availability of customs records for verification purposes.

This document must be completed **in full** with complete business address where the books are maintained (no post office box numbers) and if applicable, the corresponding mailing address of the company. The Business Number issued to your company must also be indicated. Incomplete forms will be returned for proper completion.

Please note that **two** officers of the company must sign this document. If only one officer is available, the corporate seal must be endorsed on the form

A copy of this Agreement should be held for your company records and the **original** forwarded to the following address:

**Books and Records Outside of Canada
Compliance Management Division
Admissibility Branch
Canada Border Services Agency
150 Isabella Street, 5th Floor
Ottawa, Ontario K1A 0L8
Phone: 613-952-5307
Fax: 613-941-6610
cm-go@cbsa-asfc.gc.ca**

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2.9 Confidentiality

CVOs must ensure confidentiality when conducting verifications. CVOs must be committed to ensuring that strict confidentiality of client information is maintained and must be fully aware of the importance of not disclosing any client information to those who do not have the legislative authority to access such information, including other government departments, agencies, or corporations.

Legislative Reference

The *Privacy Act* and section 107 of the *Customs Act* specify that, except as authorized by section 107, no person shall (a) knowingly provide, or allow to be provided, to any person any customs information; (b) knowingly allow any person to have access to any customs information; or "knowingly use customs information". CVOs must ensure that confidential information is protected at all times while on a client's premises. This includes the various paper files and documents carried by the CVO, as well as files kept or created in an electronic format. CVOs should not bring information about one client to the premises of another client, whether it is in hard copy or in electronic format.

The following sub-sections of the *Customs Act* outline our responsibility with respect to the Disclosure of Information.

"Definitions"

Sub-section 107(1) of the *Customs Act*

"Prohibition – provision or use of customs information"

Sub-section 107(2) of the *Customs Act*

"Authorized use of customs information by official"

Sub-section 107(3) of the *Customs Act*

"Authorized provision of information"

Sub-section 107(4) of the *Customs Act*

"Provision of information to certain persons"

Sub-section 107(5) of the *Customs Act*

"Provision of customs information by Minister"
subsection 107(6) of the Customs Act

"Providing customs information to other governments"

Sub-section 107(8) of the *Customs Act*

"Notification of Privacy Commissioner"

Subsection 107(7) of the *Customs Act*

"Disclosure of customs information to certain persons"

Sub-section 107(9) of the *Customs Act*

"Evidence"

Sub-section 107(10) of the *Customs Act*





Who to contact about disclosure of customs information

Disclosure of customs information must be approved by the authorized official, who should consult with:

- Regional co-ordinator who can assist with questions regarding section 107 of the *Customs Act*;
- If the request for information applies to a lab report, please see below for further information;
(Lab Reports and Access to Information and Privacy)
- The local Access to Information and Privacy officer;
- Legal Services or the Access to Information and Privacy and Disclosure Policy Division (ATIP Division) for requests from third parties;
- Provincial and International Relations for requests from a provincial department;
- Statistical Services for requests from a Federal Department; and
- Security Directorate for advice on securing information.

Laboratory Reports and Access to Information and Privacy

Anyone (importers, brokers, manufacturers, etc.) requesting a copy of a laboratory report should be directed to make their request through the ATIP Division.

Laboratory reports can contain proprietary/confidential information that the producer/manufacture requires being kept secret and care must be taken to not disclose such information. Therefore, disclosure of laboratory reports on specific products must be reviewed by the ATIP Division.

Privacy Act

The *Privacy Act* imposes obligations on federal government departments and agencies to respect privacy rights by limiting the collection, use and disclosure of personal information. It protects the privacy of individuals with respect to personal information about themselves held by a government institution and provides individuals with a right of access to that information, and the right to:

- examine records in their original or copy form;
- request corrections to the content of the records; and
- control the use and disclosure of that information.





Access to Information Act

The *Access to Information Act* provides a right of access to information in records under the control of a government institution, subject to limited and specific exemptions.

How to Contact the Access to Information and Privacy and Disclosure Policy Division

The Access to Information and Privacy and Disclosure Policy Division, which is part of the Strategy and Coordination Branch, directs and implements departmental policies and procedures related to the *Access to Information* and *Privacy Acts*. It manages the national program and assesses the need for, and initiates, training related to the *Access to Information* and *Privacy Acts*.

For complete details on ATIP, please visit the following Web sites:

http://infozone/cbsa-asfc/scb-dgsc/service/privacy_protect_e.asp

For requests specifically related to the CBSA, clients can either:

- contact the local Access to Information and Privacy representative or
- contact the ATIP office in Ottawa by writing to:

Director
Access to Information and Privacy Division
Leima Building
410 Laurier Avenue West, 11th floor
Ottawa, ON
K1A 0L8





2.10 *Client Support and Assistance by Compliance Verification Officers*

CBSA processes rely, to a certain extent, on voluntary compliance. In order for it to work, clients must be shown that compliance, in and of itself, is a good business decision. The client is responsible for the accuracy and completeness of their import declarations by developing these skills internally or through a service provider such as a customs broker.

Client assistance helps a client to comply, and promotes the benefits of a good compliance record. Client assistance will be accomplished by providing information to businesses.

CVOs will:

- emphasize the importance of trade statistics;
- emphasize the importance of compliance; and
- ensure advice provided to the client is correct, properly researched and documented and reliable.

Client assistance is provided throughout the verification process by the CVO.

2.11 *Verification vs. Investigation*

Verification is:

Verification is, generally speaking, an examination of documents or records in order to ensure compliance with CBSA administered legislation.

Points to Consider

1. Verification is an activity that does not normally attract implications under the *Canadian Charter of Rights and Freedoms* (e.g. Section 8 - unreasonable search & seizure; Section 7 - right not to incriminate oneself).
2. Verification is directed at verifying compliance with the CBSA administered legislation or regulations, not the gathering of information to support a prosecution.
3. Verification is directed at, for example, the integrity of trade data and ensuring internal controls are present which will result in high levels of compliance with trade laws. Protecting the proper payment of revenue through verification activities is a natural by-product of these activities.
4. Once there is suspicion that an offence has been committed (i.e. **deliberate** non-compliance), a verification should continue but the officer must be careful not to





take any action that is beyond what is necessary for achieving the objectives of paragraphs 2 and 3 above.

5. Verification may result in a demand for revenue owing, a refund to the client or changes to trade data, without any revenue implications.

Investigation is:

An investigation can be defined as an in-depth inquiry into a particular incident or case whereby information is sought to determine whether or not there has been a deliberate contravention of the *Customs Act* or related import/export legislation.

Points to Consider

1. An investigation is a function that is carried out against known, suspected, or alleged fraudulent activities. These activities include non-report/smuggling, undervaluation, transshipment fraud, deliberate misdescription of goods, etc.
2. The investigation is subject to scrutiny by the courts with the *Canadian Charter of Rights and Freedom*, protections against incriminating oneself (section 7) and unreasonable search and seizure (section 8).
3. Where there are grounds to believe that an offence has been committed, entering the premises of a business for the purpose of obtaining information would generally be carried out with a search warrant.
4. The investigation may result in civil penalties and/or criminal charges.
5. Where it has been determined that fraud has not occurred, an investigation may result in the file being turned over or returned to Compliance Verification. Even where fraud has occurred, a referral may be made to CV once the prosecution has been completed in cases where a re-determination of classification/tariff treatment/value for duty appears to be warranted.

Definition of Fraud

A wilful misrepresentation of a fact whether by words or by conduct, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another so that he/she will act upon the misrepresentation to their detriment.

Elements of Fraud

1. There must be a false representation by the representor (usually an importer).





2. There must be knowledge on the part of the representor that their representation is false or that it is made recklessly without knowledge or regard for the truth.
3. There must be intent by the representor that the false representation be acted on by the recipient (CBSA).
4. There must be ignorance of the falsity of the representation on the part of the recipient.
5. The recipient must have the right to rely on the representation.
6. The recipient must actually rely on the false representation.
7. There must be an attempt to injure or actual injury to the recipient as a result of their reliance on the false representation.

Compliance Verification

- Although fraudulent activity may take many forms, compliance verification officers most frequently come across instances of deliberate under-valuation.
- In the verification context, under-valuation means a value for duty that has not been calculated/reported in accordance with the provisions of the valuation legislation (Sections 44 - 55 of the *Customs Act*). However, under-valuation does not necessarily equal fraud. The issue becomes the nature of the under-valuation and whether the misrepresentation was innocent or deliberate.
- Although an under-valuation may occur, in many cases there may be no intention on the part of the client to evade the proper payment of revenue. It may be a result of a simple error, a disagreement with the CBSA regarding the proper interpretation of the Act, etc.
- Examples of situations where compliance verification officers should review the facts of the declared value:
 - An invoice in the amount of \$10,000 is presented for CBSA accounting purposes (or release). A second invoice exists in the amount of \$12,000. The additional \$2,000 represents a commission payable to the purchaser's agent. While this may appear to be "double invoicing", a commission paid by the purchaser to the agent for the service of representing the purchaser abroad in respect of a sale is not to be added to the price paid or payable for the goods.
 - An invoice representing a sale between a foreign vendor and a Canadian purchaser is presented. Price tickets that are affixed to the goods show a higher price than the one declared.





- The review and determination of the correct value for duty in the above examples is the responsibility of CVO's.
- The re-determination provisions of the *Customs Act* should be utilized to address matters of legitimate dispute with a valuation policy, innocent misrepresentation or carelessness.
- If a misrepresentation is not deliberate, it should be subject only to corrective measures, such as re-determinations and AMPS penalties. Included in this category are situations arising from legitimate disputes between the importer and CBSA.
- Should the importer fail to exercise proper care (i.e. due diligence), due to any misrepresentations related to additions or deductions from the price paid or payable, such as royalties, commissions, and sale for export conditions, then it may be more appropriate for the matter to be referred to or dealt with in Investigations.

Investigations

- There are various factors that are used to decide if an investigation is warranted, such as the importer's knowledge of and degree of involvement in the misrepresentation, the importer's contact with the exporter, previous non-compliance, the materiality of the contravention, and the nature of the false statement or omission.
- From a valuation perspective, the deliberate misstatement (or wilful blindness) of factual matters in relation to the establishment of the value for duty is a fraud and requires the involvement of Investigations.
- Example:
 - False invoices - this is perhaps the easiest way to commit fraud; it occurs when two (or more) invoices exist for the same transaction for the same goods. The lower value invoice is presented to CBSA. On occasion, the importer may alter the invoice using whiteout or a photocopier in order to evade the proper payment of revenue. There may be collusion with the exporter. In addition, two separate means of payment may be used in an attempt to hide the true value (company cheque for partial payment with the other on a letter of credit). This is a distinct difference from the situation where additional costs may be included on an additional invoice.





What To Do When Fraud Is Suspected

Even though you have found something that you feel is "suspicious", should you still continue with your verification? For example, in the course of your verification, you may find a letter from a vendor indicating that they would send two separate invoices, one lower, one higher. Do you have enough to prove fraud? No, but it is not your job to prove fraud and, in fact, attempting to do so is beyond the scope of your mandate and might violate the Charter rights of the subject of the verification. In most cases, you should continue with your normal verification procedures with a view to establishing a reliable, defensible position concerning the correct taxes and duties applicable/owing.

In some cases, you may come across information indicating that there is a reasonable explanation for the suspected fraud. If none is found, again, the verification process may continue and Investigations, in most cases, should **not** be contacted. As soon as all information that is necessary to complete the verification process has been collected and received (in other words, before any reports are sent to the importer), a referral may be made to Investigations by whatever means have been established in your office.

The suspicious "error" uncovered through the verification process should be reported as you would report any error. Keep in mind however, that your job is not to allege or substantiate fraud. Any report to the company should merely indicate the factual nature of the error, and the necessity to self-correct the error without any elaboration. Any subsequent reassessment should also be limited to the factual nature of the error as well.

If, at any point in a verification, you have a concern regarding possible fraudulent activity, it is strongly suggested that you discuss this with your supervisor.





The State of the Law

There have been many court decisions that have drawn a line where the administrative powers of auditors end and further gathering of information must be carried out by investigators subject to court approval (i.e. obtaining search warrants). Unfortunately, these decisions drew the line in different places, making it difficult for CCRA to implement procedures that were compliant with every decision. Although most of these cases dealt with enforcement of the *Income Tax Act*, the same principles apply to CBSA cases.

In November of 2002, the Supreme Court of Canada rendered decisions in the Jarvis and Ling tax evasion cases. Although these decisions have made things more difficult for Investigations in some ways, they have drawn a fairly clear line between audit and investigation. The primary concern of the Supreme Court is shown in this quote from the Jarvis decision: "When, in light of all the relevant circumstances, it is apparent that CCRA officials are not engaged in the verification of tax liability, but are engaged in the determination of penal liability under s.239 [of the *Income Tax Act*], the adversarial relationship between the state and the individual exists. As a result, Charter protections are engaged... and search warrants are required in order to further the investigation."

As long as the witness can satisfy the court that all steps taken by the auditor were predominantly in pursuit of a valid audit purpose, investigators can then use all of the information in the audit report for purposes of the investigation, including the preparation of search warrants and any subsequent prosecution. The courts must not be given any reason to doubt your intentions so, there should generally be no contact with Investigations while you are still collecting information, except in exigent circumstances. Such contact could be misconstrued as the Investigator directing you to use your administrative powers to gather information to be used in a criminal investigation. Although previous court decisions had made Investigations reluctant to use documents obtained by CVOs, the Supreme Court ruled that there is nothing preventing the auditor from passing to investigators their files containing validly obtained audit materials or the investigators from using such information and it being admissible at trial.





2.12 Reassessment Policy

1. The Reassessment Policy applies to corrections made to declarations of Origin, Tariff Classification, and Value for Duty under section 32.2 of the *Customs Act*.
2. Paragraphs 27, 29 and 30 in Memorandum D11-6-6, Self-Adjustments to Declarations of Origin, *Tariff Classification*, *Value for Duty*, and *Diversification of Goods*, specifically refer to the reassessment period to correct declarations and state the following:

27. When an importer has prior "reason to believe", such as a previous ruling, previous CBSA verification or audit findings, or clear legislative provisions, the importer shall correct the declarations back to the earliest date of the specific information, to a maximum of four years as provided for in the Act.

29. In all other cases, as a result of a CBSA verification or audit, the importer shall correct for its previous 12-month fiscal period from the date of notification of the verification, up to and including the end of the verification. However, in the case of an exporter origin verification, the importer shall correct for the verification period identified in the notification. For any future importations, the importer shall correctly account for the goods.

30. In the case of an importer-initiated internal audit or review, or in the case of an external company conducting an audit or review of an importer company, the importer shall correctly account for the goods from the date of the report resulting from that audit or review. This can be done provided there was no previous information available to give the importer reason to believe that a declaration was incorrect. Therefore, the importer will not be required to correct any declarations for goods accounted for prior to the date of the report.

Legislative Reference

Subsection 32.2 (1) of the *Customs Act*:

An importer or owner of goods for which preferential tariff treatment under a free trade agreement has been claimed or any person authorized to account for those goods under paragraph 32(6)(a) or under subsection 32(7) shall, within ninety days after the importer, owner or person has reason to believe that a declaration of origin for those goods made under this Act is incorrect,

- (a) make a correction to the declaration of origin in the prescribed manner and in the prescribed form containing the prescribed information; and*





- (b) *pay any amount owing as duties as a result of the correction to the declaration of origin and any interest owing or that may become owing on that amount.*

Subsection 32.2 (2) of the *Customs Act*:

Subject to regulations made under subsection (7), an importer or owner of goods or a person who is within a prescribed class of persons in relation to goods or is authorized under paragraph 32(6)(a) or subsection 32(7) to account for goods shall, within ninety days after the importer, owner or person has reason to believe that the declaration of origin (other than a declaration of origin referred to in subsection (1)), declaration of tariff classification or declaration of value for duty made under this Act for any of those goods is incorrect,

- (a) *make a correction to the declaration in the prescribed form and manner, with the prescribed information; and*
- (b) *pay any amount owing as duties as a result of the correction to the declaration and any interest owing or that may become owing on that amount.*

For further information relating to the Reassessment Policy, please refer your inquiries to the Canada Border Services Agency, Admissibility Branch, Tariff Policy Division at 613- 954-1668.





2.13 Detailed Adjustment Statement – Issuance at the Completion of a Verification

1. The national policy regarding the issuance of a Detailed Adjustment Statement (DAS) at the conclusion of a compliance post-release verification, is as follows:

A DAS will be issued only for the errors found in the verification sample. The client is required to self-correct under section 32.2 of the Customs Act all of the same errors, found outside the sample, for the verification period identified in the final report.

2. This policy became effective on June 26, 2003.
This policy was revised on June 13, 2005 to change the word “identical” in item 1 above to “same”.
3. There may be circumstances whereby the issuance of a DAS for part, or the entire verification sample of transactions is not practicable. In these instances, management discretion will be used.
4. An example of such a circumstance is, but is not limited to, findings of lump sum payments that have not been appropriately allocated to related transactions.
5. This policy will ensure national operational consistency for the CBSA and transparency for the client.
6. For further information relating to this policy, please contact the Post-Release Verification, Learning and Support Unit, Compliance Management Division, Border and Compliance Programs Directorate at 613-954-7291.

