

**EVERY BUSINESS NEEDS AN ANNUAL COMPLIANCE CHECK UP**

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Canadian organizations face complex and often overlapping compliance requirements. Failure to comply may be met with stiff penalties and, in some cases, prison terms. Annual compliance internal audits represent an essential tool for organizations to respond to these requirements. Annual internal compliance audits are particularly important for organizations that participate in transactions for the purchase or sale of products and services across international borders.

- I. Does your organization import any parts, materials or finished goods into Canada?
- II. Does your organization export any part, materials or finished goods from Canada?
- III. Does your organization participate in any sales or service arrangements (including financing) with persons outside of Canada or persons who are not Canadian citizens or Canadian residents?
- IV. Does your organization have or is it considering the acquisition of interests in or the creation of a joint venture with another organization that would answer yes to any of the above or is located outside of Canada?

If you answered YES to any of the above questions, then consider the following list as part of your organization's annual compliance audit:

- Customs Reporting and Duty Payment Requirements: Canadian Customs laws require each importer to accurately classify and value each imported item. Choosing the correct tariff classification code requires a detailed assessment of the item imported. If you don't accurately classify your imports or you miscalculate their value for duty, you may be paying the wrong amount of duty, exposing your organization to prosecution and significant penalties. Additionally, if you elect to apply preferential duties available under one of Canada's free trade agreements (e.g. NAFTA, CETA) it is important that you have the required proof of origin to support your election.
- Product Marking, Labelling and Packaging Requirements: Several pieces of Canadian legislation prescribe marking requirements for imported products, such as the country of origin or the manufacturer's or importer's name and contact information. Other legislation may prescribe packaging and labelling requirements for consumer products or may require you to include your regulatory authorization/approval (e.g. Health Canada) on the label. In many instances, incomplete or inaccurate markings or deficient packaging, and incidents or injuries that occur, must be reported immediately. Failure to appropriately report, respond and comply may result in prosecution and significant penalties.
- Export & Import Controls and Sanctions: Canada maintains regulations that may restrict or prohibit the products that your organization wishes to import or export. These regulations further restrict those individuals and entities with which your organization may deal. The restrictions are broadly applied and, depending on: (i) the product (goods and technology); (ii) the destination or source; and (iii) those involved, may limit or preclude your direct and indirect dealings, financing, supporting or facilitating of the proposed



transactions. Even if the subsidiary or parent company that is concluding a transaction, is separately run in a different country, there are instances in which the Canadian restrictions will apply. A careful and comprehensive review of all transactions is important to ensure compliance. Failure to comply bears significant penalties including fines and/or imprisonment.

- Corruption of Foreign Public Officials Prohibitions: Canadian law prohibits the giving or offering of a benefit or anything of value to a foreign Public Official, in order to obtain or retain an advantage in the course of business. It also includes strict accounting requirements that must be met when accounting for permitted payments made to any foreign Public Official. The U.S., the UK and many other countries have similar legislation and a robust compliance program should be implemented to ensure that all of your organization's dealings and dealings of subsidiary or parent organizations comply. Your annual internal compliance audit should include a review of organizational activities to ensure ongoing compliance. As with Canadian sanctions and export/import restrictions, failure to comply bears significant penalties (fines and/or imprisonment).
- Anti-Dumping and Countervailing Duties: When a domestic industry is able to demonstrate that imports of “dumped” or “subsidized” goods from identified countries, are injuring their domestic business, dumping and/or countervailing duties may be applied. These duties (“AD/CVD Duties”) are applied at the time of importation in addition to customs duties and, remain in place for 5 or more years, after which they may be renewed if the injury continues. The AD/CVD Duties can represent significant additional cost that must be paid by the importer of record at the time of importation. Failure to identify goods subject to AD/CVD Duties and/or failure to understand that a good originates in a subject country can be very costly. When conducting an annual internal compliance, you should include audit steps to identify/review the entries of affected products to ensure that the documentation is accurate and complete and all applicable duties have been paid. Not only should you pay careful attention to AD/CVD orders in place, but you should also monitor: (i) when those orders may expire; (ii) whether they are likely to be renewed; and (iii) whether new investigations are underway in respect of different products. If an AD/CVD order is in place, it is important to ensure your supplier also is willing to communicate with the CBSA to maintain normal values.
- NEXUS Trusted Traveller Program Requirements: If your employees enjoy the privileges of the NEXUS Trusted Traveller Program, it is important to remind them that they must strictly adhere to the NEXUS Program rules and comply with all Canada and US customs and immigration laws. While certain recourse is available when NEXUS privileges are cancelled/revoked, and in some instances, NEXUS privileges may be reinstated, removal of NEXUS privileges means the individual will no longer be able to use NEXUS lanes and queues that permit faster movement through airports and at other border crossings into Canada and the U.S. Further, failure to comply with border laws may result in frequent secondary inspections by the CBSA and US CBP. The rules are strictly applied.
- Search and seizure of laptops, cellphones and other PDA's: Your annual internal compliance audit should include a review of your laptop, cellphone and PDA policies. Do those policies contemplate the possibility that employees carrying such devices across an international border may be required to provide access, including passwords to customs officers. Your audit should review compliance with the measures set out to appropriately protect confidential organizational information from customs officer access.

Should you wish further information or assistance in connection with your internal compliance audit or any of the requirements set out above, you may contact us at Lexsage Professional Corporation.



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