

*Comment:* It is unclear whether employees of a corporate compliance office will be able to discuss with CBP issues concerning a related company's import transactions.

*Response:* Discussions with CBP regarding import transactions may amount to the transaction of customs business given that the statutory definition of "customs business" includes "those activities involving transactions with the Customs Service \* \* \*". However, CBP recognizes that preventing communication between corporate compliance offices and CBP would frustrate the primary purpose of such an office, that is, to provide accurate advice to the related company. In another example of making an accommodation between broker licensing and reasonable care requirements, CBP has determined that representatives of corporate compliance offices may communicate directly with CBP on behalf of related companies regarding the activities performed by the corporate compliance office to ensure that reasonable care was used in connection with preparation and filing of Customs documents. However, they should be prepared to demonstrate their authority to represent the interests of the related companies by presentation of a power of attorney or other letter of authorization.

*Comment:* It is unclear whether there would be a violation of the proposed rule if a corporate compliance office were to supply specific tariff information in writing to a related company. This needs to be clarified, as do questions arising over whether related companies can file ruling requests or protests on behalf of each other.

*Response:* No violation would occur if the compliance office were simply supplying the specific tariff information to the related company. The related company importer could then use the information to fill out the documentation to be filed with CBP, or turn it over to a broker for that purpose. On the issue of ruling requests and protests, 19 CFR 177.1(c) and 19 CFR 174.12(a)(6), respectively, permit an "authorized agent" to file those documents.

*Comment:* Please explain why companies that employ in-house customs brokers cannot provide advice, or prepare and file documents, on behalf of related companies. Such centralization would help to achieve high compliance rates.

*Response:* The broker statute makes provision for various types of broker's licenses: individual, corporate, association, or partnership. While the

mere providing of advice to a related company may present no problem, if a corporation wishes to transact customs business (for example, prepare and file documents) for others, it must obtain a corporate license of its own. This requirement does not disappear simply because the corporation has a person on its payroll who is individually licensed, because the employee's licensed status does not confer a similar status on the employer. Furthermore, the actions of the employee performed during the regular course of his employment will be attributed to his employer, not to him individually. An analogy may be drawn to the situation in which an insurance company hires an attorney to work in its policy underwriting department: the employment of the attorney does not entitle the insurance company to practice law.

*Comment:* Most corporations with centralized customs compliance functions have put into place standard operating procedures ("SOPs") for responding to CBP inquiries, submitting documents to CBP, and working with their various customs brokers. If CBP takes a strict approach to what constitutes the actual preparation and filing of documents, corporations will be forced to redesign their SOPs to limit their compliance activities. Such changes would probably include a restructuring of the corporation's relationship with its customs brokers to ensure that in-house customs compliance personnel only provide information to customs brokers and, perhaps, review any documents to be filed with CBP. Restricting the in-house compliance activities in this manner does not advance the policy goal of fostering reasonable care under the Mod Act.

*Response:* A reference to document "preparation" was added to the definition of "customs business" in the broker statute by section 648 of the Mod Act, and this statutory change has been in effect since December 8, 1993. The proposed regulatory changes at issue here did not attempt to impose a change in the meaning of document preparation. Moreover, as already pointed out in this comment discussion, the reference to "actual" preparation in the proposed regulatory text was intended to clarify that permissible corporate compliance activities include activities leading up to, but not in fact directly involving, document preparation. Therefore, to the extent that a corporation has been in compliance with the statutory standard since the adoption of the Mod Act amendment in 1993, the proposed regulatory amendments would not require any

change in the corporation's SOPs as regards compliance activities.

Although the Mod Act amended 19 U.S.C. 1484 by imposing a reasonable care responsibility on importers of record, it did not eliminate or modify the requirement in 19 U.S.C. 1641 that a person have a broker's license to conduct customs business on behalf of others. The Mod Act also made no changes to the identity of the persons who, pursuant to 19 U.S.C. 1484, have the right to make entry. Those persons are the owner or purchaser of the imported merchandise, or a licensed broker who has been appointed by the owner, purchaser or consignee. Consequently, CBP in defining "corporate compliance activity" had to take into account the requirements of the broker and entry statutes. By proposing the addition of an explicit provision allowing related companies to have centralized compliance departments whose role would be advisory in nature, CBP attempted to strike a balance between an importer's reasonable care obligations and the proscription regarding the performance of customs business on behalf of others without a broker's license. It is the position of CBP that the proposed amendments are not restrictive in their effect and that they will foster compliance with importers' reasonable care obligations.

*Comment:* The development of the Automated Commercial Environment (ACE), and the possibility that future entries will be filed over the Internet, provides the perfect opportunity for CBP to look at changing practices. ACE will allow all parties to a customs transaction the ability to input information about the transaction. It is out of step for CBP to restrict these activities to independent customs brokers.

*Response:* The proposed regulations would enhance, not restrict, the ability of related companies (including those that have in-house brokers) to engage in certain activities that previously under the broker regulations were restricted to importers or their appointed brokers. The liberalization in the proposed regulatory changes had to stop at document preparation and filing in order to ensure the most appropriate balance between reasonable care obligations and the terms of the broker statute.

*Comment:* CBP has recognized that the effectiveness of its new security measures (for example, C-TPAT, Account Management, Importer Self-Assessment) are enhanced by corporate centralization of customs functions, yet the proposed rule limits the ability of