



TSCA 101 for Importers: Good Faith is No Defense to Faulty Compliance Certification

By: Ryan W. Trail

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The Toxic Substances Control Act (TSCA) regulates the manufacture, use, disposal, and import of chemical substances in the United States. By defining the term "manufacture" to include the term "import," TSCA places the burden on importers to ensure their shipments of chemical substances into the country comply with applicable TSCA regulations. That can be a heavy burden because many importers have had nothing to do with the chemical substances before they arrive here. Moreover, the person responsible for compliance may be other than a traditional importer. By defining "importer" to include "the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf," TSCA can ensnare brokers and other "agents," too.

EPA and the U.S. Customs Service coordinate to enforce TSCA regulations on importers, and section 13 of TSCA requires the Customs Service to deny entry to any shipment that does not comply. To verify a shipment's compliance, the importer must sign a certification statement which states either "I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA . . ." or, if the importer claims an exemption from TSCA, "I certify that all chemicals in this shipment are not subject to TSCA." Without this signed certification on the entry document or invoice, the Customs Service is obligated to detain the shipment.

To further burden the importer, TSCA regulations require the certification statement be made based on "actual knowledge" of the chemical constituents of the substances and their compliance with TSCA. While the regulation does recognize the difficulty in obtaining "actual knowledge" of foreign manufactured substances, it states "good faith efforts" of the importer to verify the shipment's compliance is not a defense to a violation, but may be used only as evidence to mitigate civil penalties.

With civil penalties of up to \$37,500 per violation per day, TSCA presents a potentially significant impediment to importers. Thus, importers should be proactive in taking steps to gain the knowledge they need to verify compliance. To help, EPA has published a TSCA compliance checklist specifically

for importers. It's a helpful resource for those importers seeking to determine the applicability of TSCA regulations and the necessary steps in maintaining compliance prior to and during the importation process.

EPA's compliance checklist may be found at <http://www2.epa.gov/sites/production/files/2015-03/documents/checklist.pdf>.

Related People

- Ryan W. Trail ? 803.567.4605 ? Rtrail@williamsmullen.com

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