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ALERT

International Trade

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CBP Imposes Heightened Requirements for Non-U.S. Importers and Brokers

On November 6, U.S. Customs and Border Protection ("CBP") issued an interim final rule ("IFR") imposing new requirements on foreign importers of record ("IORs") entering merchandise into the United States. There are corresponding responsibilities for customs brokers and consequences for foreign IORs and brokers for noncompliance. Generally speaking, these imports will need to go through parties participating in CBP's Customs Trade Partnership Against Terrorism ("CTPAT") program. Foreign IORs should take steps to ensure they will be in compliance when the new rules come into effect on January 5, 2027.

Because the IFR will not come into effect until January 5, parties have some time to adjust their practices. Interested parties may also submit comments to CBP by or before January 5, which eventually could result in changes to the customs regulations. The IFR follows President Trump's June 3, 2026, Executive Order, "Strengthening Customs Enforcement," which directed agency heads to revise U.S. customs regulations to close "[s]ystematic inefficiencies, loopholes, insufficient enforcement mechanisms, and outdated processes." Key provisions of the IFR are described below.

NEW IOR CLASSIFICATIONS

The IFR establishes a new 19 C.F.R. Part 110, defining for the first time separate concepts of "U.S. importer of record" and "foreign importer of record." To continue to operate as IORs, non-U.S. IORs will face much more stringent requirements than is the case today.

Under the new regulations, a "U.S. IOR" is a party that is either:

- a U.S. citizen or lawful permanent resident; or
- an entity that is located in and organized under the laws of the United States and either (i) a majority (51 percent) of its "beneficial owner(s)" must be U.S. citizens or lawful permanent residents which exercise control over the entity or (ii) maintains direct ownership of a significant amount of unencumbered real property in the United States.

The IFR considers a "beneficial owner" to be a natural person that, directly or indirectly, either (i) exercises substantial control over the entity or (ii) owns or controls at least 25 percent of the ownership interests of the

entity. This means that ownership is traced to the level of shareholding interests held by individuals. Any importer of record that does not qualify as a "U.S. IOR" will be considered a "foreign IOR."

While the IFR does not, itself, define what constitutes a "significant amount of unencumbered real property," CBP since clarified that it is "100% of the IOR's prior year's entered value or $20 million, whichever is greater. This is to ensure that sufficient assets exist in the United States for the importer to cover payment of duties, taxes, and fees."

CBP may conduct verifications to determine whether an individual or entity qualifies as a "U.S. IOR." If a party has misrepresented itself as a U.S. IOR, CBP may require live entry or discontinue immediate delivery privileges. These consequences would have the effect of requiring that the importer pay all estimated duties before merchandise would be released from CBP custody.

INCREASED COMPLIANCE REQUIREMENTS FOR FOREIGN IORS

Starting January 5, foreign IORs will not be permitted to make entry unless the foreign IOR either:

- becomes certified and validated under CBP's CTPAT program; or
- uses a licensed U.S. customs broker that is CTPAT certified and validated.[1]

Currently, only Canadian nonresident importers may apply for CTPAT validation as foreign IORs. Because many customs brokers that currently represent foreign IORs are not part of the CTPAT program, foreign IORs that do not have the requisite level of assets in the United States (and do not wish to enroll in the CTPAT program) will need to switch to CTPAT certified and validated brokers. Non-CTPAT participating customs brokers that wish to be able to service foreign IORs will need to become CTPAT certified and validated (CBP has made clear that customs brokers cannot make entry for foreign IORs while their CTPAT validation is pending). Validation is not a simple and quick process, however, and can take several months.

HEIGHTENED OBLIGATIONS AND INCREASED PENALTIES FOR CUSTOMS BROKERS

Once the new regulations take effect, customs brokers will be required to verify that a client qualifies as a U.S. IOR prior to making entry on their behalf. Verification may take place through the review of:

- proof of citizenship or lawful permanent residence;
- corporate charters;
- financial statements and records;
- purchase receipts; or
- documents of title.

Customs brokers must maintain all verification records for five years following the date of verification. Because brokers will be responsible for verifying the status of their customers who claim U.S. IOR status, customs brokers will likely require a much greater level of information than in the past. In that regard, CBP has stated:

> *"Licensed customs brokers are now responsible for verifying that their clients meet the qualifications of a U.S. IOR before filing entries on their behalf. This requirement ensures that foreign imports are held accountable to U.S. laws which helps mitigate the risks to revenue, U.S. industries, American consumers, and national security."*
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> - CBP Office of Trade Executive Assistant Commissioner Susan S. Thomas

In addition, the IFR amends 19 C.F.R. § 141.46 to require that, even when a customs broker is acting directly as IOR

1. CBP released a listing of all CTPAT validated customs brokers, available at: https://ace-accounts.cbp.gov/s/customs-broker-listing.

for an entry on behalf of an importing customer, "a power of attorney must be executed whenever a customs broker is transacting customs business on behalf of a client."

Historically, CBP capped the monetary penalty that could be assessed against customs brokers at $30,000. The IFR authorizes CBP to assess penalties of up to the domestic value of the entered merchandise pursuant to the civil customs fraud provisions at 19 U.S.C. § 1592.

Notably, given the heightened obligations, customs brokers may request additional time—through May 6, 2027—from CBP to comply with the new regulations. Requests for delayed compliance must be submitted by January 5, 2027.

KEY TAKEAWAYS

- Beginning January 5, 2027:
  - foreign IORs must either be validated under the CTPAT program or use a CTPAT-validated customs broker to make entry.
  - U.S. IORs, or their broker, must declare U.S.-IOR status on entry documentation, subject to CBP verification.
- Because the IFR places new and onerous requirements on customs brokers, brokers may request delayed compliance—through May 6, 2027—from CBP. Requests must be submitted by January 5, 2027.
- Penalties for noncompliance with the IFR are severe, running up to the domestic value of the entered merchandise.
- The IFR underscores the Trump Administration's focus on trade compliance and customs enforcement.

Blank Rome's International Trade group is well equipped to assist clients in navigating these developments. For further analysis, please contact Timothy J. Hruby, Alan G. Kashdan, Brendan S. Saslow, Rachel D. Evans, or Feven T. Negussie.

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