

# Right to Make Entry Customs Business

ICPA Webinar  
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# Who Do You Think You Are?



# **RIGHT TO MAKE ENTRY**

# Right to Make Entry

- Right to make entry is limited to:
  - Owner
  - Purchaser
  - A licensed CHB on behalf of the owner, purchaser, or consignee
- A nominal consignee may not use a broker to make entry on its behalf. The broker must be the IOR (entry and entry summary) designated by the owner, purchaser, or consignee.

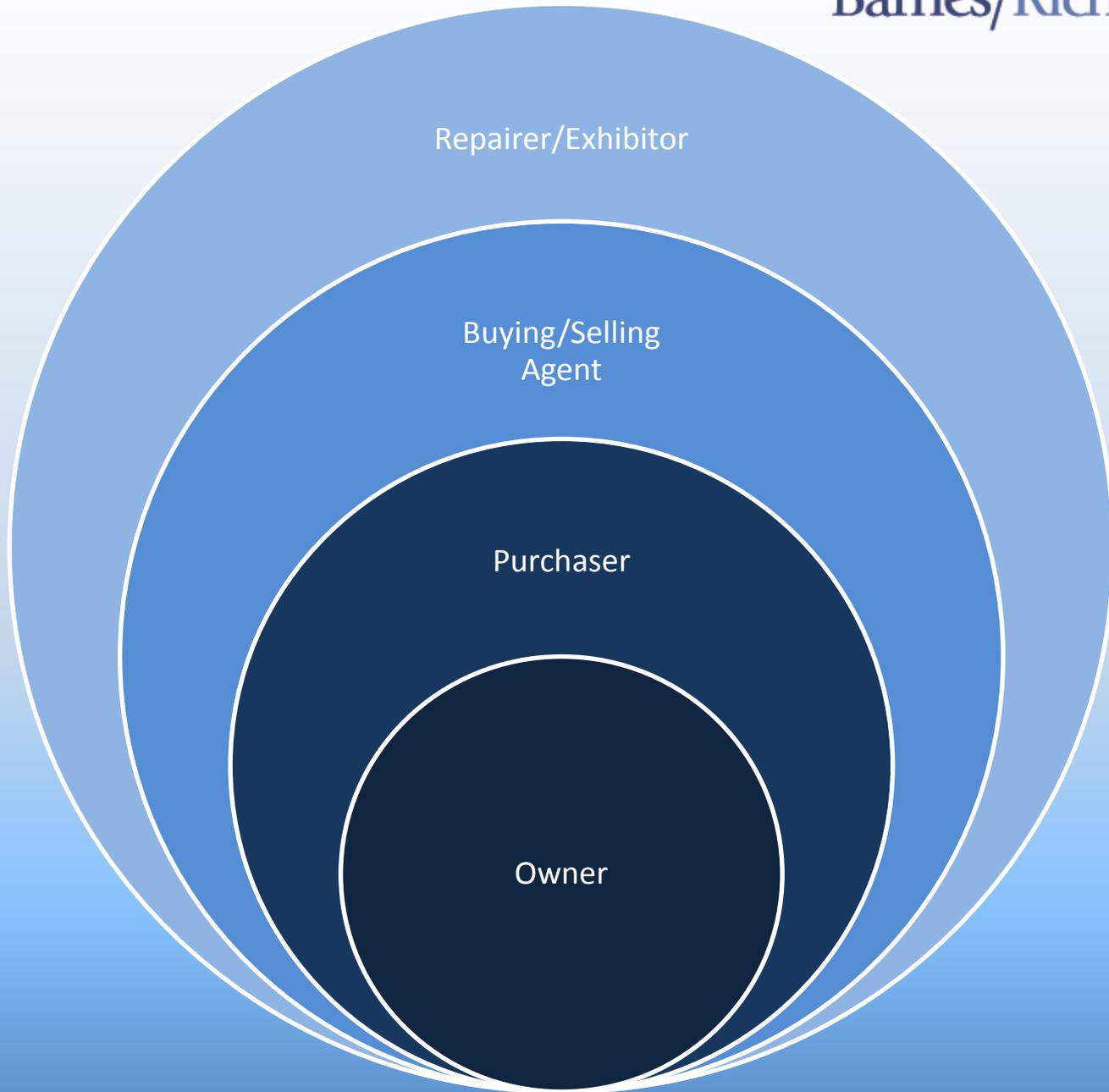
# Owner in the Real World

- Title
- Deed
- Registration



# Owner and Purchaser for CBP

“Any party with a financial interest in a transaction”



Freight  
Consolidators

Express  
Consignment  
Operators

Owner or  
Purchaser

Brokers not  
permitted in  
a Port

Nominal  
Consignee

“In no case can the nominal consignee make entry in his own name, even through a licensed Customs broker, or serve as the ultimate consignee.”

# Why Do We Care?

- Related companies importing for one another
- Supplier managed inventory
- Transfers on the water
- 3PL practices

# EXAMPLES

# Agents: HQ 240983 (Jun. 23, 2014)

- Chemical manufactured in China
- Importer listed as “Seacon”
- Seacon acts on behalf of the manufacturer to supply Michelin tire plants

# Seacon's role:

- Negotiates the contract between Sinopec and Michelin
- Secures PO from Michelin
- Arranges shipping
- Customer service and support in the US
- ISF 10+2 filings, C-TPAT registrant in US
- Principal on the surety bond
- Working with customers to collect payment
- Manage ISO tanks for the chemicals

# Seacon's Compensation

- DDP-(FOB price + prepaid freight + insurance)
- Paid by Sinopec, not Michelin
- Seacon shown on B/L as Notify Party

What do you think?

# Customs' Analysis

- Owner or purchaser is any party with a financial interest in the transaction
- Includes a buying or selling agent
- Must have more than a custodial interest in the goods
- More than a mere bailee

# Customs' Analysis

- Seacon is a selling agent
- Also, Seacon is compensated for post-entry logistical procedures concerning the ISO tanks

I.O.R.

# HQ 242069 (Feb 6, 2014)

- Employee relocation services from overseas to the US
- Assist the employee with all aspects of moving household goods
  - “Exercises dominion and control” similar to an exhibitor or repairer
  - Non-commercial and, therefore, no loss of revenue
  - Designated agent for employee

What do you think?

# Customs' Analysis

- Interest must go beyond mere custody
- Nominal consignees with possession of the B/L do not have a financial interest
- A party that merely arranges transportation, storage, and delivery is a freight forwarder=nominal consignee

# Customs' Analysis

To determine the existence of a sufficient financial interest, qualifying one as owner or purchaser, a party must expect or rely on a financial benefit from the imported merchandise and the focus of the inquiry is whether a nexus between the financial welfare of the would-be importer's business activities and the imported merchandise can be identified.

Not I.O.R.

# Related Parties H080181 (Dec. 30, 2009)

- GAP wants to make importation on behalf of its subsidiaries
- Subs to reimburse GAP for duties and fees
- GAP gains no interest or rights in the goods
- GAP performs no post-entry procedures

# Customs' Analysis

CBP has consistently held that because a parent corporation and a subsidiary are in law separate and distinct entities, a parent corporation could not make entry for its subsidiary. See e.g., HQ 114116, dated February 2, 1998; HQ 115248, dated August 28, 2001; HQ 223804, dated June 19, 2002. As the companies are considered separate and distinct entities, an employee of one corporation could not make entry for the other corporation. See HQ 114116. "Stock ownership by one corporation is not included within the definition of owner or purchaser set forth in [CBP] Directive 3530-002". See HQ 225357, dated December 22, 1994.

**NOT I.O.R.**

# Supplier Managed Inventory HQ H092448 (May 4, 2010)

- Customer in the U.S. demands supplier maintain local inventory of parts on site
- Supplier ships DDP, maintains ownership
- When customer removes the parts from inventory, the sale takes place
- Invoices are generated, payments made
- Customer agrees to purchase inventory remaining after 90 days

# Supplier Managed Inventory

- Customer wants to be importer of record.
- What do you think?

# Customs' Analysis

- The customer is the purchaser
- Purchaser has the right to make entry.



# Transfers on the Water

- Cars produced in Japan and sold to U.S. affiliate
- Prior to arrival in the port, the U.S. company sells to unrelated dealerships
- Prior to arrival, dealers resell to retail customers
- Shipping docs list freight forwarder as consignee with delivery to inland carrier
- IOR is . . .
  - Japanese parent?
  - U.S. distributor?
  - Dealership?
  - Freight forwarder?

It depends. What benefit do they receive from the importation? What does the agreement show about their continued interest?

Nominal consignee. Can use a broker as IOR, but not in its own name.

# The Takeaway: Proper IOR

Owner

- Title to the goods

Purchaser

- Contract to buy

Financial  
interest

- Buying or selling agent
- Repairer or exhibitor
- Post-entry processor
- Business benefits from presence of the goods in US

# **CUSTOMS BUSINESS**



# Why Does This Matter?

- Only licensed brokers may engage in “customs business” on behalf of another
- Non-licensed individuals want to provide compliance services
- Licensed brokers look for new business opportunities
- Corporations want to share and consolidate compliance expertise among related entities

# Quick Background

19 U.S.C. § 1641(b)(1): “No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker’s license.”

# Customs Business

Those activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

# Broker Activities HQ H715280 (Sep. 24, 2012)

- Proposed new business
- Non-broker employees will data mine ERP and finance systems looking for inconsistencies submitted to CBP
- Also looking at ACE extracts
- Effectively non-licensed post-entry audit
- Potential entry errors will be forwarded to the licensed broker

# CBP Analysis

- Customs business includes:
  - The preparation of customs documents
  - Activities leading to the preparation
  - Providing advice on specific transactions

What do you think?

# CBP Analysis

- Post-entry audit does not involve the preparation of documents for Customs
- No decisions will be made regarding
  - Classification
  - Value
  - Rate of duty, etc.
- Entity will not resolve any of the discrepancies

**N.L.R.**

# On The Other Hand: HQ H167815 (Jun. 28, 2013)

- DHL wants to outsource DDP billing disputes to a non-licensed entity
- Scenario 1: Will review CF 3461, CF 7501, AWB, invoice, etc.
- Scenario 2: Will only review AWB, invoice, etc. without customs documents

# Review: Customs Business

- Involves transactions with Customs
- Concerning entry and admissibility
- Classification
- Valuation
- Payment of duty
- Preparation of documents to be filed with Customs

What do you think:

Scenario 1?

Scenario 2?

# Customs' Analysis

- Client billing does not involve a customs transaction
- But, post-entry verification may be customs business **when it is possible to correct a previously filed customs entry**
- Verification that might result in a correction submitted to CBP must be conducted by a LCB.

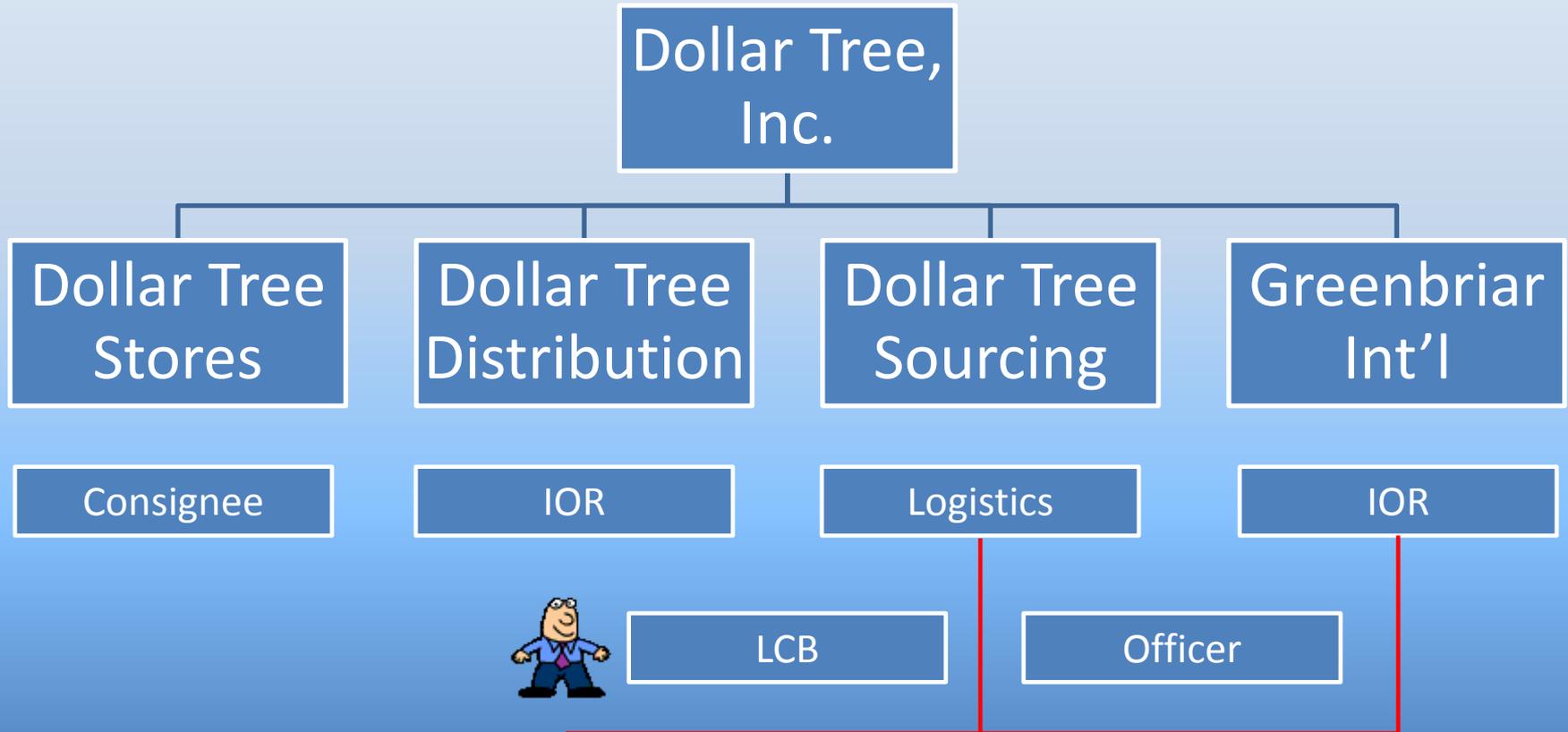
LCB

# Can These Be Reconciled?

- First ruling only involved the identification of errors
- A broker would always review the data before determining that there is a violation
- In the second ruling . . . ?
- Honestly, it's not clear these can be reconciled
- Both involve post-entry review
- The second ruling involves internal billing. Compliance issues seem secondary.

# Related Parties—Shared Services

## HQ H135698 (July 3, 2012)



# Can the LCB:

- File entries
- Pay duties
- Respond to CBP requests (CF28) and notices (CF29)
- File post-entry corrections
- For DT Stores “and its sister companies?”

# CBP Analysis

- Corporate compliance is not customs business
- It is an activity performed to ensure that documents for a related business entity or entities are prepared and filed with CBP using reasonable care
- It is NOT the actual preparation or filing of the documents
- Related is a 50% ownership test

# CBP Analysis

- An unlicensed individual may conduct compliance activity on behalf of Dollar Tree businesses
- As an employee of DT Distribution, he can conduct customs business
- As an officer of DT Sourcing and Greenbriar, he can conduct customs business
- But an officer of DTS and Greenbrier cannot simultaneously conduct customs business as an employee on behalf of DTD

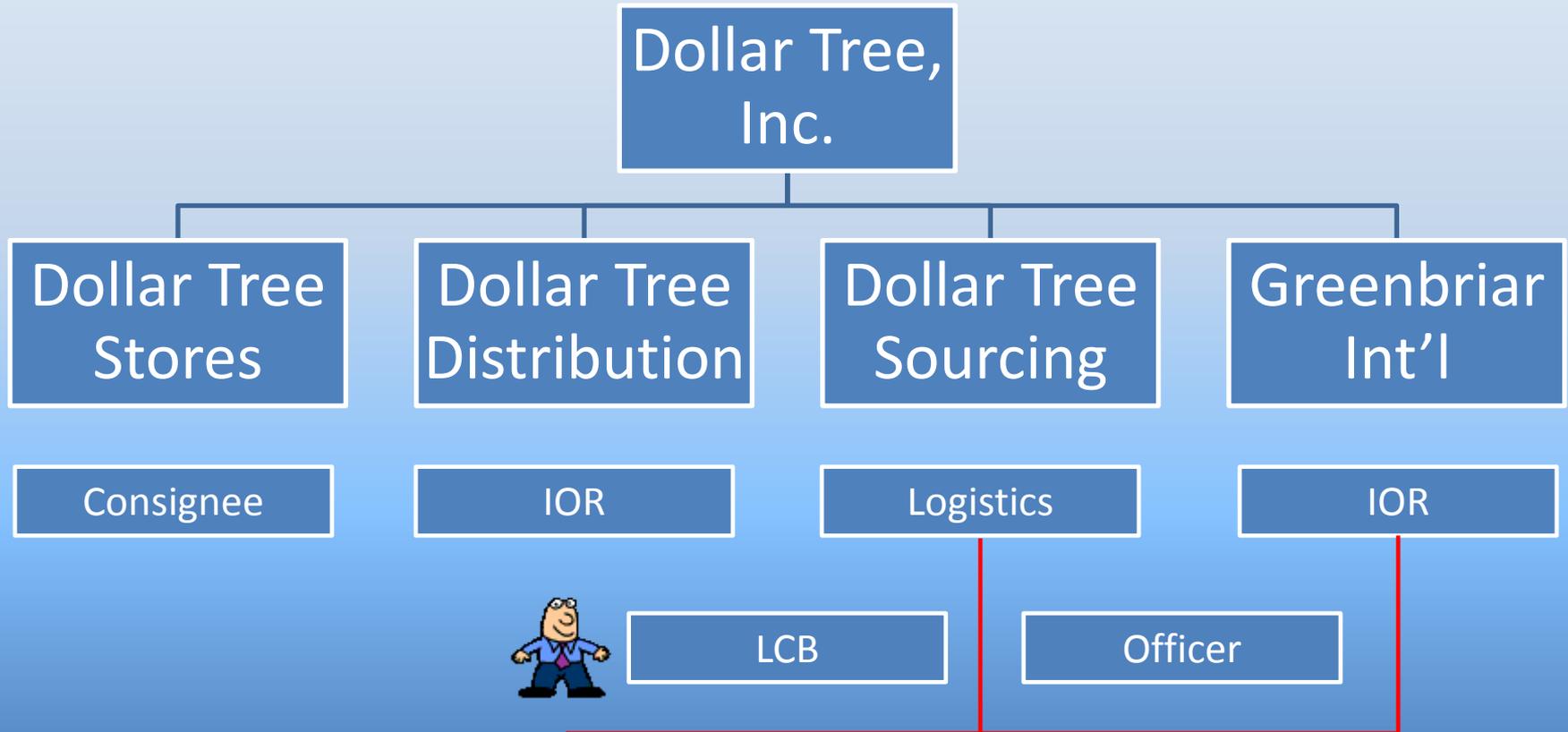
I know what you are thinking

**But, he has a license!**

**His employer does not.**

# Related Parties—Shared Services

## HQ H135698 (July 3, 2012)



Consequently, the Customs Compliance Manager may only operate as an officer of DT Sourcing and Greenbriar and conduct customs business on behalf of each during hours that are non-concurrent with those served as a full-time employee of DT Distribution. This requirement ensures that the Customs Compliance Manager will not be conducting customs business on behalf of the other entities without a broker's license, in contravention of 19 C.F.R. §111.2(a)(2).

# Hence, This Guy



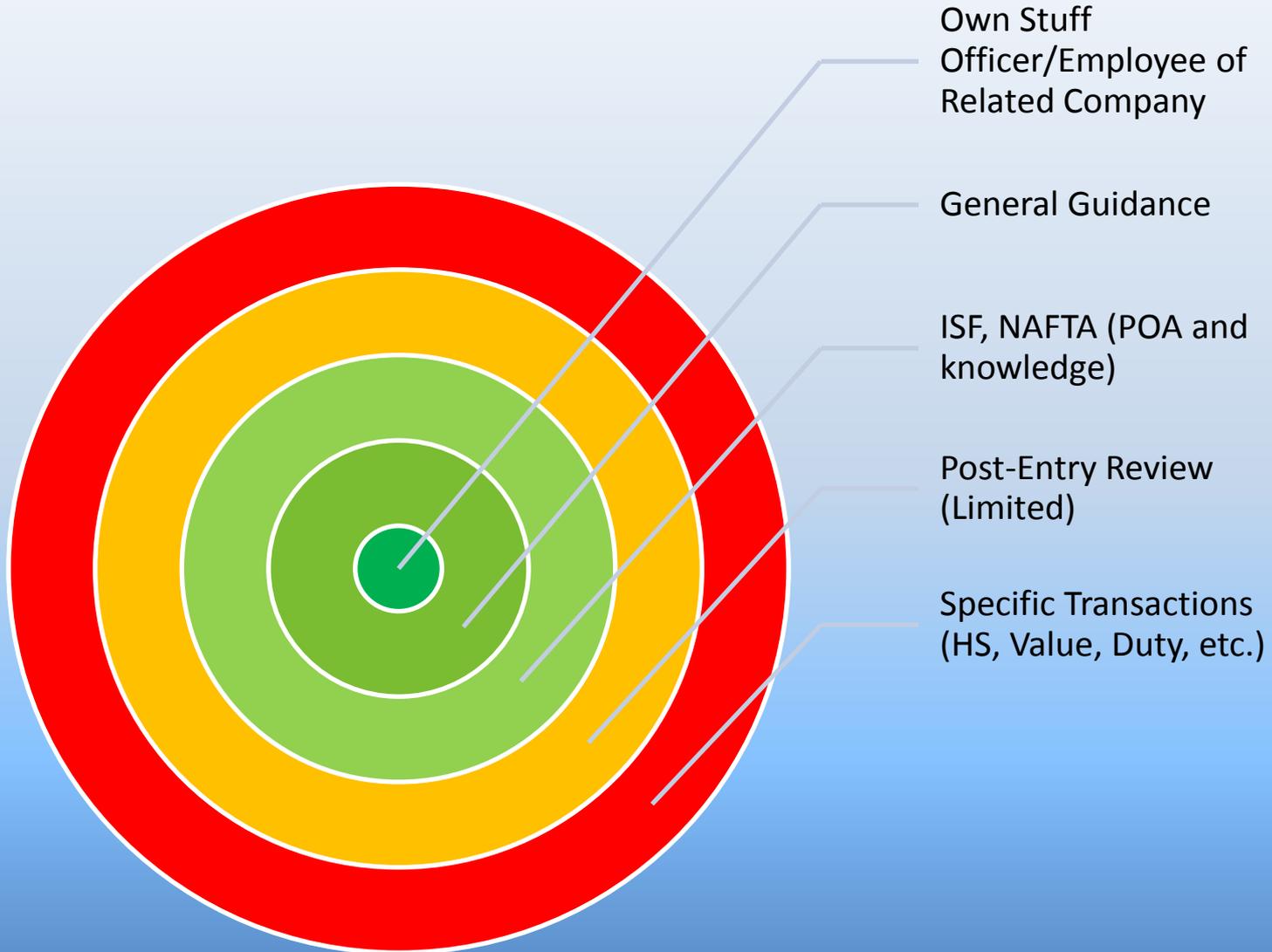
# ISF and NAFTA CO's

- ISF (HQ H045695)
  - Can be filed by an “agent”
  - Agent need not be LCB
  - Should have a POA
- NAFTA CO (HQ 562134)
  - Officer of exporter can sign CO
  - Agent can sign
  - Employees are agents, others can be designated
  - Employee of one sub designated as agent of related sub to complete NAFTA CO

# Corporate Governance

- Incorporation documents define purpose of the company
- Purpose should include brokerage

# The Take Away: Customs Business



# Thanks

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Next month:

“The Essentials of Customs Entry Auditing”

Jane Taeger of Samuel Shapiro & Co.

December 10, 2014, 1pm EST