

# International Precious Metals 41<sup>st</sup> Conference Technical Session

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Peter Quinter

# Staying Out of Trouble and Keeping the Feds Away from Your Import Shipments

# Contact Information



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Do you have questions about importing/exporting?

<http://www.grcustomslaw.com>

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TUESDAY, JUNE 12, 2012

### New CBP Regulation for Suspected Counterfeit Merchandise



Peter Quinter

Finally, after years of debate, on April 24, 2012, CBP amended its regulations regarding the detention and seizure of suspected imported counterfeit merchandise. In my opinion, it provides a good balance between the rights of legitimate importers, and the need for CBP to examine, detain, and seize merchandise that violates the trademark rights of companies that have registered their trademarks with the U.S. Patent and Trademark Office and then recorded those trademarks with CBP. The interim rule is entitled "Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border," and amends 19 CFR Parts 133 and 151.

[In summary, here are the important changes:](#)

1. Merchandise may be detained by CBP for up to 30 days from the date the merchandise is presented for examination to CBP.
2. The U.S. importer will receive written notification from CBP within 5 days of the detention of the merchandise by CBP.
3. The U.S. importer then has 7 days to establish to CBP's satisfaction that the detained merchandise is not counterfeit.
4. CBP may provide to the trademark owner, at any time, written notice of the date

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## I. Importation Process

## II. Declaration to U.S. Customs and Border Protection (CBP)

- A. Value
- B. Tariff Classification
- C. Country of Origin

## III. Investigation by CBP

- A. Request for Information
- B. Notice of Action
- C. Penalty or Criminal Prosecution

DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection

**ENTRY SUMMARY**

1. Filer Code/Entry No.		2. Entry Type		3. Summary Date	
4. Surety No.		5. Bond Type		6. Port Code	
7. Entry Date		10. Country of Origin		11. Import Date	
8. Importing Carrier		9. Mode of Transport		12. B/L or AWB No.	
13. Manufacturer ID		14. Exporting Country		15. Export Date	
16. I.T. No.		17. I.T. Date		18. Missing Docs	
19. Foreign Port of Lading		20. U.S. Port of Unlading		21. Location of Goods/G.O. No.	
22. Consignee No.		23. Importer No.		24. Reference No.	
25. Ultimate Consignee Name and Address				26. Importer of Record Name and Address	
City		State		Zip	
27.		28. Description of Merchandise		32.	
29.		30.		33.	
A. HTSUS No.		A. Grossweight		A. HTSUS Rate	
B. ADA/CVD No.		B. Manifest Qty.		B. ADA/CVD Rate	
31.		34.		35.	
Net Quantity in HTSUS Units		Duty and I.R. Tax		Total Entered Value	
		Dollars		\$	
		Cents		Total Other Fees	
				\$	
36. DECLARATION OF IMPORTER OF RECORD (OWNER OR PURCHASER) OR AUTHORIZED AGENT				37. Duty	
I declare that I am the <input type="checkbox"/> Importer of record and that the actual owner, purchaser, or consignee for CBP purposes is as shown above, OR <input type="checkbox"/> owner or purchaser or agent thereof. I further declare that the merchandise <input type="checkbox"/> was obtained pursuant to a purchase or agreement to purchase and that the prices set forth in the invoices are true, OR <input type="checkbox"/> was not obtained pursuant to a purchase or agreement to purchase and the statements in the invoices as to value or price are true to the best of my knowledge and belief. I also declare that the statements in the documents herein filed fully disclose to the best of my knowledge and belief the true prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties and are true and correct, and that all goods or services provided to the seller of the merchandise either free or at reduced cost are fully disclosed. I will immediately furnish to the appropriate CBP officer any information showing a different statement of facts.				REASON CODE	
				C. Ascertained Tax	
				D. Ascertained Other	
41. DECLARANT NAME				E. Ascertained Total	
TITLE				38. Tax	
SIGNATURE				39. Other	
DATE				40. Total	
42. Broker/Filer Information (Name, address, phone number)				43. Broker/Importer File No.	

CBP Form 7501 (06/09)

# ENTRY SUMMARY CBP Form 7501

# REQUEST FOR INFORMATION CBP FORM 28

DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection  
**REQUEST FOR INFORMATION**  
19 CFR 151.11

OMB No. 1651-0023  
Exp. 05-31-2011

		1. Date of Request	
		2. Date of Entry and Importation	
3. Manufacturer/Seller/Shipper	4. Carrier		5. Entry No.
5a. Invoice Description of Merchandise		5b. Invoice No.	6. HTSUS Item No.
7. Country of Origin/Exportation		8. CBP Broker and Reference or File No.	
9. TO:		10. FROM:	
<b>Production of Documents and/or Information Required by Law:</b> If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.		11a. Port	11b. Date Information Furnished
<b>General Information and Instructions on Reverse</b>			
12. Please Answer Indicated Question(s)		13. Please Furnish Indicated Item(s)	
<input type="checkbox"/> A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise.		<input type="checkbox"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto.	
<input type="checkbox"/> B. Identify and give details of any additional costs/expenses incurred in this transaction, such as: <input type="checkbox"/> (1) packing <input type="checkbox"/> (2) commissions <input type="checkbox"/> (3) proceeds that accrue to the seller <input type="checkbox"/> (4) assists <input type="checkbox"/> (5) royalties and/or license fees		<input type="checkbox"/> B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates. <input type="checkbox"/> C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article. <input type="checkbox"/> D. Submit samples: Article number and description _____ from container _____ mark(s) and number _____ Samples consumed in analysis, and other samples whose return is not specifically requested, will not normally be returned. <input type="checkbox"/> E. See item 14 below.	
14. CBP Officer Message			
15. Reply Message (Use additional sheets if more space is needed.)			
16. CERTIFICATION It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)			
I hereby certify that the information furnished herewith or upon this form in response to this inquiry is true and correct, and that any samples provided were taken from the shipment covered by this entry.		16a. Name and Title/Position of Signer (Owner, Importer, or Corporate/Company Official)	16b. Signature
		16c. Telephone No.	16d. Date
17. CBP Officer		18. Team Designation	19. Telephone No.

CBP Form 28 (02/02)



**NOTICE OF ACTION**  
19 CFR 152.2

<b>This is NOT a Notice of Liquidation</b>			132	1. DATE OF THIS NOTICE
2. CARRIER	3. DATE OF IMPORTATION	4. DATE OF ENTRY	5. ENTRY NO.	
6. MFR/SELLER/SHIPPER	7. COUNTRY	8. CBP BROKER AND FILE NO.		
9. DESCRIPTION OF MERCHANDISE				
10. TO			11. FROM	
<p>12. THE FOLLOWING ACTION WHICH WILL RESULT IN AN INCREASE IN DUTIES,--</p> <p><input type="checkbox"/> IS <u>PROPOSED</u>.</p> <p><input type="checkbox"/> HAS BEEN <u>TAKEN</u>.</p> <p>IF YOU DISAGREE WITH THIS PROPOSED ACTION, PLEASE FURNISH YOUR REASONS IN WRITING TO THIS OFFICE WITHIN 20 DAYS FROM THE DATE OF THIS NOTICE. AFTER 20 DAYS THE ENTRY WILL BE LIQUIDATED AS PROPOSED.</p> <p>THE ENTRY IS IN THE LIQUIDATION PROCESS AND IS NOT AVAILABLE FOR REVIEW IN THIS OFFICE.</p> <p>TYPE OF ACTION    A. <input type="checkbox"/> RATE ADVANCE                                    B. <input type="checkbox"/> VALUE ADVANCE                                    C. <input type="checkbox"/> EXCESS <input type="checkbox"/> WEIGHT <input type="checkbox"/> QUANTITY                                    D. <input type="checkbox"/> OTHER (See below)</p>				
13. EXPLANATION (Refer to Action letter designations above)				
14. CBP OFFICER (Print or Type)			15. TEAM DESIGNATION	16. TELEPHONE

CBP FORM 29 (03/95)

# NOTICE OF ACTION CBP FORM 29

## Harmonized Tariff Schedule of the United States (2015)

7112		Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal:				
7112.30.00	<u>00</u>	Ash containing precious metal or precious metal compounds Other:	kg	Free		Free
7112.91.00	<u>00</u>	Of gold, including metal clad with gold but excluding sweepings containing other precious metals	g Au g	Free		Free
7112.92.00	<u>00</u>	Of platinum, including metal clad with platinum but excluding sweepings containing other precious metals	g Pt g	Free		Free
7112.99.00	<u>00</u>	Other	g	Free		Free

## Harmonized Tariff Schedule of the United States (2015)

7113		Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal:				
		Of precious metal whether or not plated or clad with precious metal:				
7113.11		Of silver, whether or not plated or clad with other precious metal:				
7113.11.10	<u>00</u>	Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles pr	X	6.3%	Free (A, AU, BH, CA, CL, CO, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	80%

## §10.133 Conditions required to be met.

When the tariff classification of any article is controlled by its actual use in the United States, three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular subheading of the Harmonized Tariff Schedule of the United States applicable to the merchandise specifies other conditions. The conditions are that:

- (a) Such use is intended at the time of importation.
- (b) The article is so used.
- (c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

## §10.134 Declaration of intent.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by entering the proper subheading of an actual use provision of the Harmonized Tariff Schedule of the United States (HTSUS) and the reduced or free rate of duty on the entry form. Entry made under an actual use provision of the HTSUS may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the HTSUS, provided the port director is satisfied the merchandise will be so used. However, the port director shall require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be used for the purposes stated in the HTSUS.

## §10.137 Records of use.

(a) Maintenance by importer. The importer shall maintain accurate and detailed records showing the use or other disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established.

(b) Retention of records. The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry.

(c) Examination of records. The records required to be kept by paragraph (a) of this section shall be available at all times for examination and inspection by an authorized Customs officer.

## §10.138 Proof of use.

The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

## 19 U.S. Code § 1592 - Penalties for fraud, gross negligence, and negligence

### (a) Prohibition

#### (1) General rule

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax, or fee, no person,—

(A) may enter, any merchandise into the commerce of the United States by means of—

(i) any document or electronically transmitted data is **material** and **false**, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).



## 19 U.S. Code § 1592 - Penalties for fraud, gross negligence, and negligence

### (4) Prior disclosure

If the person concerned discloses the circumstances of a violation of before, or without knowledge of, the commencement of a formal investigation of such violation, merchandise shall not be seized and any monetary penalty to be assessed of this section shall not exceed—

## 19 U.S. Code § 1592 - Penalties for fraud, gross negligence, and negligence

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties, taxes, and fees of which the United States is or may be deprived,

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest on the amount of lawful duties, after notice by the CBP of its calculation of such unpaid amount.

## 19 U.S. Code § 1592 - Penalties for fraud, gross negligence, and negligence

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

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