

Atlanta International Forwarders and Brokers Association

January 12, 2016

by Peter Quinter, Attorney

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TOPICS

**How to Handle an Investigation by
BIS, OFAC, or DHS, Voluntary
Self-Disclosure to BIS, DDTC, and
OFAC for Export Violations,
Policies & Procedures for resolving
Penalty cases with BIS, Do's and
Don'ts in Petitioning CBP's FPFO**



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Do you have questions about importing/exporting?

<http://www.grcustomslaw.com>

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Customs & International Trade Law Blog**

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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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MELISSA GROISMAN'S LINKEDIN

Questions??



19 USC § 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 thereby, no person, by fraud, gross negligence, or negligence—

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

(i) any document or electronically transmitted data or information, written or oral statement, or act which 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 CFR 162.74

(c) Tender of actual loss of duties, taxes and fees or actual loss of revenue. A person who discloses the circumstances of the violation shall tender any actual loss of duties, taxes and fees or actual loss of revenue. The disclosing party may choose to make the tender either at the time of the claimed prior disclosure, or within 30 days after CBP notifies the person in writing of CBP calculation of the actual loss of duties, taxes and fees or actual loss of revenue. The Fines, Penalties, and Forfeitures Officer may extend the 30-day period if there is good cause to do so.

Disclosure of the Circumstances of a Violation

1. Identify the type of merchandise involved
2. Identify the entry number, if applicable, the dates of import or export, and the port(s) of import or export
3. Identify the materially false statements, omissions, or acts, and explain how and when they occurred.
4. State the true information that should have been provided

Practice Point – Request thirty (30) days to conduct thorough investigation of violation.

Bureau of Industry and Security (BIS): What is an Export Violation?

- (a) Engaging in prohibited conduct
- (b) Causing, aiding, or abetting a violation
- (c) Solicitation
- (d) Conspiracy
- (e) Acting with knowledge of a violation
- (f) Possession with intent to export illegally
- (g) Misrepresentation and concealment of facts
- (h) Evasion
- (j) License alteration
- (k) Acting contrary to the terms of a denial order



Voluntary Self-Disclosures to BIS:

BIS encourages the submission of Voluntary Self Disclosures (VSDs) by parties who believe they may have violated the EAR. VSDs are an excellent indicator of a party's intent to comply with U.S. export control requirements and may provide BIS important information on other ongoing violations. BIS carefully reviews VSDs received from disclosing parties to determine if violations of the EAR have occurred and to determine the appropriate corrective action when violations have taken place. Most VSDs are resolved by means other than the issuance of an administrative penalty. In instances in which BIS determines that the issuance of an administrative penalty is appropriate for the resolution of a VSD, BIS affords the submission of a VSD "great weight" in assessing and mitigating the penalty. In appropriate cases, fines and other administrative penalties may be significantly reduced.

Pursuant to Part 764.5 of the EAR, the information constituting a VSD or any other correspondence pertaining to a VSD may be submitted to:

Director, Office of Export Enforcement
1401 Constitution Ave., Room H4514
Washington, DC 20230
Tel: (202) 482-1208
Facsimile: (202) 482-5889

VSD: The Process

- ALL Voluntary Self-Disclosures should be made to the BIS Office of Export Enforcement
- OEE: Procedures
- VSD: Only a Mitigating Factor
- Other Mitigating and Aggravating Factors



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VSD: Procedural Requirements

Initial Disclosure:

- Initial notification

After the initial notification:

- Narrative account
 - The kind of violation involved
 - Explanation of violation
 - Identities
 - Description of Items involved
 - Supporting documents, shipping documents & mitigating circumstances





**September 11, 2001
Act of Terrorism
World Trade Center
New York City**

Export Enforcement Federal Agencies

1. OFAC



2. BIS



3. TSA



4. CBP



5. U.S. Census Bureau



6. Homeland Security Investigations (HSI)





Federal Investigations

1. Visit by Special Agent to workplace
2. Summons by BIS or ICE
3. Administrative subpoena by OFAC
4. Federal Court subpoena
5. Federal court seizure, search or arrest warrant

Federal Investigations for Export Activities

- Criminal
- Administrative

OFAC Sanctions Program

1. Specially Designated National List (SDN List)
2. Counter Terrorism Sanctions
3. Counter Narcotics Trafficking Sanctions
4. Non-proliferation sanctions
5. Country specific sanctions (Cuba, Iran, Syria, etc).



OFAC Subpoena Power 31 C.F.R. 501.602

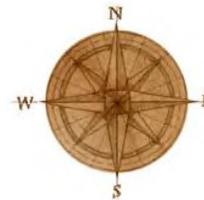


- **Broad Subpoena Power.** “Every person is required to furnish under oath... at any time as may be required... complete information relative to any transaction... subject to the provision of this chapter or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect.”

Failure to Furnish Requested Information to OFAC Pursuant to 31 CFR 501.602

1. \$20,000 Penalty
2. \$50,000 Penalty if value involves more than \$500,000





Persons Subject to the Jurisdiction of the United States – 31 CFR 515.329

- The term person subject to the jurisdiction of the United States includes:
 - (a) Any individual, wherever located, who is a citizen or resident of the United States;
 - (b) Any person within the United States as defined in § 515.330;
 - (c) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and
 - (d) Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section.]

OFAC Responses to Apparent Violations

An OFAC Investigation May Lead to:

- No Action
- Request for Further Information
- Cautionary Letter
- Finding of Violation (Non-Monetary)
- Civil Monetary Penalty
- Criminal Referral
- Other
 - License Suspension
 - Cease and Desist Order



Base Penalty Matrix

Egregious Case

	No	Yes
<p style="text-align: right;">Yes</p> <hr/> <p>Voluntary Self-Disclosure</p>	(1) One-Half of Transaction Value (Capped at \$125,000 per violation/\$32,500 per TWEA Violation)	(3) One-Half of Applicable Statutory Maximum
<p style="text-align: right;">No</p> <hr/>	(2) Applicable Schedule Amount (Capped at \$250,000 per violation/\$65,000 per TWEA violation)	(4) Applicable Statutory Maximum

OFAC Civil Penalty Process

1. Pre-Penalty Notice
2. Response to Pre-Penalty Notice
3. Penalty Notice
4. Referral to DOJ for Collection.



General Factors

1. Willful or Reckless Violation of Law.
2. Awareness of Conduct at Issue.
3. Harm of Sanctions Program.
4. Individual Characteristics of Violator.
5. Remedial Response.
6. Cooperation with OFAC.



Special Mitigating Factors

1. Voluntary Self-Disclosure
2. Effective export compliance program
3. Violation was isolated occurrence
4. License would have been issued
5. Cooperating with Agency





DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

DEC 28 2012

ENF

Miami, FL

Re: Administrative Subpoena

Dear Mr. :

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") has reason to believe you may have exported or imported goods or services to or from Iran. OFAC is conducting a civil investigation into such potential exports or imports.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ENF:

Peter A. Quinter
GrayRobinson, P.A.
1221 Brickell Avenue, Suite 1600
Miami, FL 33131

FEB 1 2013

Subject: Cautionary Letter to

Dear Mr. Quinter:

The Department of the Treasury's Office of Foreign Assets Control ("OFAC") appreciates your assistance during its investigation of your client,

OFAC has decided to address this matter by issuing the enclosed Cautionary Letter to Mr. Please ensure that your client receives this Cautionary Letter.

Should you have any questions, please contact me at (202) 622-6059 or at Matthew.Glass@treasury.gov.

Sincerely,

Matthew Glass
Enforcement Officer
Office of Foreign Assets Control

Enclosure



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

CAUTIONARY LETTER

ENF

FEB 1 2013

Dear Mr. :

Thank you for your response of April 5, 2011 to an administrative subpoena of February 14, 2011 from the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") regarding a potential violation of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560.

OFAC has completed its review the eight transactions detailed in your response, three of which involved personal remittances to parties in Iran and five of which involved payments to . Engaging in commercial transactions with entities who do not utilize transparent payment methods poses an increased risk for U.S. persons as the lack of transparency makes it difficult for U.S. persons to ensure compliance with the Regulations.

OFAC has decided to address this matter by issuing you this Cautionary Letter instead of pursuing a civil monetary penalty. This Cautionary Letter represents a final enforcement response to the apparent violations but does not constitute a final agency determination as to whether violations occurred, nor does it preclude OFAC from taking future enforcement action should new or additional information warrant renewed attention. Under applicable law, each violation of the Regulations is subject to a civil monetary penalty of up to the greater of \$250,000 or twice the value of the transaction.

Should you have any questions, you may contact Enforcement Officer Matthew Glass at (202) 622-6059.

Sincerely,

Maura K. Rezendes
Enforcement Section Chief
Office of Foreign Assets Control



Voluntary Self- Disclosures to
Directorate of Defense Trade Controls
U.S. Department of State

United States of America Department of State
Application/License for Permanent Export of Unclassified
Defense Articles and Related Unclassified Technical Data

22. Applicants Statement-

- An empowered official (22 CFR § 120.25) or an official of a foreign government entity in the U.S., hereby apply for a license to complete the transaction above; warrant the truth of all statements made herein; and acknowledge, understand and will comply with the provisions of Title 22 CFR § 120-130, and any conditions and limitations imposed.

§ 127.1 - Violations.

(a) It is unlawful:

- (1) To export or attempt to export from the United States, or to reexport or retransfer or attempt to reexport or retransfer from one foreign destination to another foreign destination by a U.S. person of any defense article or technical data or by anyone of any U.S. origin defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Directorate of Defense Trade Controls;
- (3) To conspire to export, import, reexport or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Directorate of Defense Trade Controls;
- (4) To violate any of the terms or conditions of licenses or approvals granted pursuant to this subchapter.

§ 127.12 Voluntary disclosures.

General policy. The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons, firms, or any organizations that believe they may have violated any export control provision of the Arms Export Control Act, or any regulation, order, license, or other authorization issued under the authority of the Arms Export Control Act. Voluntary Self-Disclosure may be considered a voluntary disclosure as a mitigating factor in determining the administrative penalties, if any, that should be imposed. Failure to report a violation may result in circumstances detrimental to U.S. national security and foreign policy interests, and will be an adverse factor in determining the appropriate disposition of such violations.

Some of the mitigating factors the Directorate of Defense Trade Controls may consider are:

- (1) Whether the transaction would have been authorized, and under what conditions, had a proper license request been made;
- (2) Why the violation occurred;
- (3) The degree of cooperation with the ensuing investigation;
- (4) Whether the person has instituted or improved an internal compliance program to reduce the likelihood of future violation;
- (5) Whether the person making the disclosure did so with the full knowledge and authorization of the person's senior management. (If not, then the Directorate will not deem the disclosure voluntary as covered in this section.)



United States Department of State
Bureau of Political-Military Affairs
Directorate of Defense Trade Controls
Washington, D.C. 20520-0112

In reply refer to
DTCC Case: 13

NOV 06 2012

The Office of Defense Trade Controls Compliance, Enforcement Division (“DTCC/END”) is in receipt of an initial voluntary disclosure letter from _____ dated October 29, 2012. In accordance with § 127.12(c)(1)(i) of the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. Parts 120-130), please submit _____ full disclosure with the case number noted within sixty (60) calendar days of the date of this letter.

To conduct a critical assessment of any ITAR violation(s), we require a complete understanding of the violation(s). Section 127.12(c)(2) of the ITAR enumerates the information that should be included in a voluntary disclosure.

This case has been assigned to Ms. Danielle Pressler, Compliance Specialist, Enforcement Division. If you have any questions please contact Ms. Pressler at (202) 632-3386.

Please note our reference number in any future correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read 'Glenn E. Smith', written over a white rectangular area.

Glenn E. Smith
Chief, Enforcement Division
Office of Defense Trade Controls
Compliance

Atlanta International Forwarders and Brokers Association

January 12, 2016

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