

Seafood Expo North America & Seafood Processing North America

*March 6, 2016
Boston Convention Center
Boston, Massachusetts*

The Future of Seafood Regulation Post- FSMA



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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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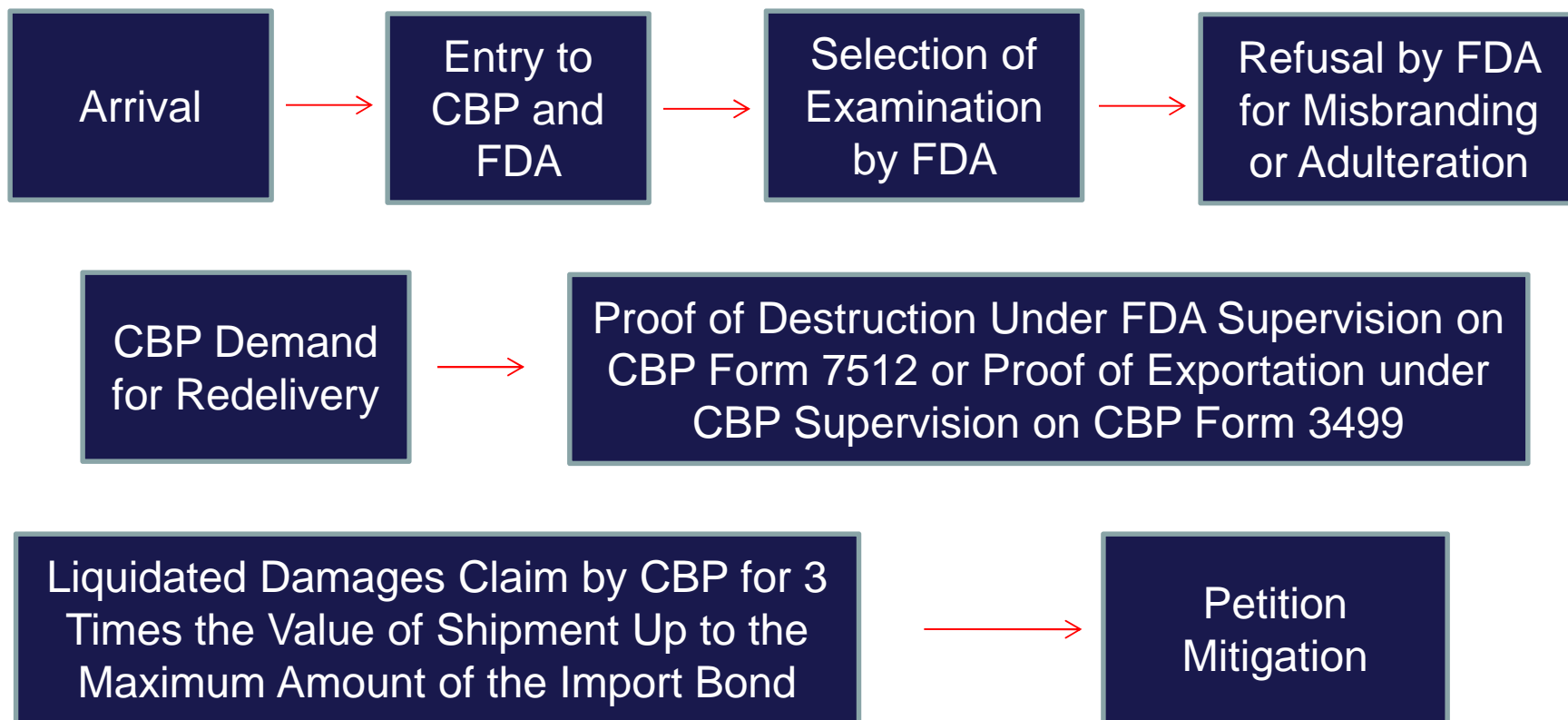
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Learning Objective

- Avoiding common and costly errors for seafood importation and distribution
- Latest practical experiences in food safety measures required by the federal government
- Compliance with U.S. Customs and FDA regulations and procedures to avoid detentions, delays, seizures and penalties

QUESTIONS??





Detention without Physical Examination (DWPE)

- DWPE is appropriate when there exists a
 - **history of the importation of violative products,**
 - **or products that may appear violative,**
 - **or when other information indicates that future entries may appear violative**
- Detention without physical examination properly places the responsibility for ensuring compliance with the law on the importer.

February 2009 GAO Report on “Seafood Fraud”

CBP focuses on detecting schemes to avoid paying customs duties as seafood products enter the country, such as transshipment to avoid antidumping duties. CBP’s import specialists review seafood import documentation on product type, value, and country of origin to ensure that importers have paid the appropriate duties. The agency also uses

information provided by one of its National Targeting and Analysis Groups to help identify potentially fraudulent seafood shipments. This group analyzes data on foreign producers and importers that may be involved in transshipment schemes to avoid paying antidumping duties and works with port officials to examine these shipments as they arrive.

Congressional Research Service April 7, 2015 Report on “Seafood Fraud”

Mislabeling or Substituting Species

Substituting an inexpensive species for one of higher value can be relatively easy. The differences in the taste and texture of different fish species' flesh may be subtle, and therefore it is frequently difficult to identify a species in fillet form, especially after it is prepared for consumption.

A 2011 *Consumer Reports Magazine* study of seafood sampled from New York, New Jersey, and Connecticut found that 20% to 25% of seafood products were mislabeled.

Lacey Act and Food, Drug, and Cosmetic Act

Mislabeled foods such as fish and shrimp are prohibited by the Lacey Act, 16 U.S.C. §§ 3372(d)(1) and 3372(d)(2), and the FDCA, 21 U.S.C. § 331. The Lacey Act, in pertinent part, makes it unlawful for a person to falsely identify any fish that has been, or is intended to be, imported, sold, purchased, or received from any foreign country or transported in interstate or foreign commerce. The FDCA, in pertinent part, prohibits the alteration or removal of the whole or any part of the labeling of food, if such act is done while such article is held for sale after shipment in interstate commerce.

Transshipment and Mislabeling to Avoid Customs Duties

Transshipment occurs when foreign producers ship goods through a second country en route to the United States. Although transshipment is generally legal and commonly used in the ordinary course of business, it is illegal if done for the purpose of circumventing duties and other applicable trade restrictions. For example, shrimp from China reportedly have been shipped to the United States by way of Cambodia and Malaysia to avoid paying antidumping duties levied by the United States on shrimp imported from China. In other cases, seafood such as Asian catfish has been mislabeled as sole specifically to avoid paying antidumping duties.

Wednesday, January 20, 2010

CEO OF SEAFOOD IMPORTER PLEADS GUILTY TO IMPORTING AND SELLING FALSELY LABELED FISH FROM VIETNAM
Attempts to Evade \$60 Million in Federal Tariffs

WASHINGTON—The chief executive officer of Sterling Seafood Corporation located in Cresskill, N.J., pleaded guilty today to importing falsely labeled fish from Vietnam and evading over \$60 million in federal tariffs, as well as selling over \$500,000 in similarly misbranded fish purchased from another importer in the United States, the Justice Department announced.

The U.S. Department of Commerce establishes antidumping duties or tariffs on certain imported products. In January 2003, an anti-dumping duty or tariff was placed on all imports of Vietnamese catfish into the United States because the Vietnamese catfish was being marketed at a significantly lower price than was market rate at the time. That initial anti-dumping order imposed a duty of up to 63.88 percent on fish.

The CEO specifically instructed the Vietnamese company to fraudulently identify the Vietnamese catfish as "grouper" on commercial contracts, purchase orders, and other documents because grouper fish was not subject to any anti-dumping duties.

The charge of importing of falsely labeled goods into the United States carries a maximum statutory sentence of two years in prison and a \$250,000 fine, or twice the monetary gain derived from the offense. The second count, which charges selling misbranded fish in the United States, carries a maximum statutory sentence of three years in prison and a \$250,000 fine, or twice the monetary gain derived from the offense.

19 CFR §113.62 Basic importation and entry bond conditions.

BASIC IMPORTATION AND ENTRY BOND CONDITIONS

(a) *Agreement to Pay Duties, Taxes, and Charges....*

(d) *Agreement to Redeliver Merchandise.* If merchandise is released conditionally from CBP custody to the principal before all required evidence is produced, before its quantity and value are determined, or before its right of admission into the United States is determined, the principal agrees to redeliver timely, on demand by CBP...

It is understood that any demand for redelivery will be made no later than 30 days after the date that the merchandise was released or 30 days after the end of the conditional release period (whichever is later). (See §§141.113(b), 12.73(b)(2), and 12.80 of this chapter.)

(e) *Agreement to Rectify Any Non-Compliance with Provisions of Admission.* If merchandise is released conditionally to the principal before its right of admission into the United States is determined, the principal, after notification, agrees to mark, clean, fumigate, destroy, export or do any other thing to the merchandise in order to comply with the law and regulations governing its admission into the United States within the time period set in the notification.

19 CFR §113.62 Basic importation and entry bond conditions. (Continued)

(f) *Agreement for Examination of Merchandise.* If the principal obtains permission to have any merchandise examined elsewhere than at a wharf or other place in charge of a CBP officer, the principal agrees to:

(1) Hold the merchandise at the place of examination until the merchandise is properly released;

...

(m) *Consequence of default.* (1) If the principal defaults on agreements in this condition other than conditions in paragraphs (a), (g), (i), (j), (k)(2), or (l) of this section the obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default, or **three times the value of the merchandise** involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation.

Notice of FDA Action

- Products that appear (from examination or otherwise) to be violative may be detained and ultimately refused entry into the U.S.
- The standard for detention and refusal is extremely low- detention is permissible without actual observation of a product or its labeling.

Refusal

- The product then has to be exported or destroyed (in accordance with CBP Bulletin) within 90 days otherwise subject to Liquidated Damages.

CBP Form 301 Customs Bond

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

OMB No. 1651-0050 Exp. 05/31/2017

CUSTOMS BOND
19 CFR Part 113

CBP USE ONLY	BOND NUMBER (Assigned by CBP)
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Broker Filer Code:

Surety Reference Number:

In order to secure payment of any duty, tax or charge and compliance with law or regulation as a result of activity covered by any condition referenced below, we, the below name principal(s) and surety(ies), bind ourselves to the United States in the amount or amounts, as set forth below.

Execution Date

SECTION I – Select Single Transaction OR Continuous Bond (not both) and fill in the applicable blank spaces.

<input type="checkbox"/> SINGLE TRANSACTION BOND	Identification of transaction secured by this bond (e.g., entry number, seizure number, etc.)	Transaction Date	Port Code
<input type="checkbox"/> CONTINUOUS BOND	Effective Date	This bond remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amounts listed below for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the period and manner prescribed in the CBP Regulations.	

SECTION II – This bond includes the following agreements. Check one box only. (Except 3a may be checked independently or with 3.)

Activity Code	Activity Name and CBP Regulations in which conditions codified	Limit of Liability	Activity Code	Activity Name and CBP Regulations in which conditions codified	Limit of Liability
<input type="checkbox"/> 1	Importer or broker §113.62		<input type="checkbox"/> 8	Detention of Copyrighted Material §113.70 -Single Transaction Only-	
<input type="checkbox"/> 1a	Drawback Payments Refunds §113.65		<input type="checkbox"/> 9	Neutrality §113.71 -Single Transaction Only-	
<input type="checkbox"/> 2	Custodian of Bonded Merchandise §113.63 (Includes bonded carriers, freight forwarders, cartmen and lightermen, all classes of warehouse, container station operators) -Continuous Bond Only-		<input type="checkbox"/> 10	Court Costs for Condemned Goods §113.72 -Single Transaction Only-	
<input type="checkbox"/> 3	International Carmer §113.64		<input type="checkbox"/> 11	Airport Security Bond Part 113 App A	
<input type="checkbox"/> 3a	Instruments of International Traffic... §113.66 -Continuous Bond Only-		<input type="checkbox"/> 12	International Trade Commission (ITC) Exclusion Bond Part 113 App B	
<input type="checkbox"/> 4	Foreign Trade Zone §113.73 -Continuous Bond Only-		<input type="checkbox"/> 14	In-Bond Export Consolidation Bond	
<input type="checkbox"/> 5	Public Gauger §113.67		<input type="checkbox"/> 15	Intellectual Property Rights (IPR)	
<input type="checkbox"/> 6	Wool & Fur Products §113.68 Labeling Acts Importation -Single Transaction Only-		<input type="checkbox"/> 16	Importer Security Filing (ISF) Part 113 App D	
<input type="checkbox"/> 7	Bill of Lading §113.69 -Single Transaction Only-		<input type="checkbox"/> 17	Marine Terminal Operator -Continuous Bond Only-	

PRINCIPAL

Name and Physical Address (including legal description and state of incorporation)	By checking the box you agree that you have a seal in accordance with 19 CFR 113.25 ▶	AFFIX SEAL or Check Box <input type="checkbox"/> Check Box
	CBP Identification Number:	
	Signature	
Principal and surety agree that any charge against the bond under any of the listed names is as though it was made by the principal(s). Principal and surety agree that they are bound to the same extent as if they executed a separate bond covering each set of conditions incorporated by reference to the CBP regulations into this bond. If the surety fails to appoint an agent under Title 31, United States Code, Section 9306, surety consents to service on the Clerk of any United States District Court or the U.S. Court of International Trade, where suit is brought on this bond. That clerk is to send notice of the service to the surety at: ▶		Mailing Address Requested by the Surety

SURETY

Name and Physical Address (including legal description and state of incorporation)	Surety Number	Agent ID Number	<input type="checkbox"/> Check Box
	Signature		

CBP Form 301 (06/12)

CBP Form 3499 Application and Approval to Manipulate, Examine, Sample or transfer goods

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection		
APPLICATION AND APPROVAL TO MANIPULATE, EXAMINE, SAMPLE OR TRANSFER GOODS		
19 CFR 19.8, 19.11, 158.43		Form Approved OMB No. 1651-0006 Exp. 12-31-2016
1. GOODS CONSIGNED TO (Name)	2. GOODS EXPORTED FROM	3. PORT/PORT CODE AND DATE OF APPLICATION
4. LOCATION OF GOODS	5. CARRIER OR SHIP (Name)	6. BILL OF LADING OR CBP 7512 NO.
7. IS AREA BONDED? <input type="checkbox"/> YES <input type="checkbox"/> NO	8. ENTRY INFORMATION <input type="checkbox"/> Warehouse <input type="checkbox"/> Consumption	Number: _____ Date: _____
PERMISSION IS REQUESTED TO: (Describe the complete operation to be performed under CBP supervision on the goods listed below):		
9. MARKS AND NUMBERS	10. DESCRIPTION	FOR CBP USE ONLY 11. MANIPULATED VALUE
12. SIGNATURE OF APPLICANT		
APPROVED		
13. DATE	14. SIGNATURE AND TITLE OF APPROVING CBP OFFICER	
See Page 2 of form for Paperwork Reduction Act Notice. Customs and Border Protection Officers Report on Reverse. CBP Form 3499 (10/15)		

CBP Form 7512 Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

19 CFR 10.60, 10.61, 123.41, 123.42

**TRANSPORTATION ENTRY AND MANIFEST
OF GOODS SUBJECT TO CBP
INSPECTION AND PERMIT**
U.S. Customs and Border Protection
PORT FIRST U.S. PORT
CODE NO. OF UNLADING
PORT OF DATE

CMB Control Number: 1651-0003
Expiration Date: 05/31/2017

Entry No. _____
Class of Entry _____
(I.T.) (T.E.) (W.D.) (E.) (Drawback, etc.)

Entered or Imported by Importer/IRS # to be shipped _____
In bond via _____ consigned to _____
(C.H.L. number) (Vessel or carrier) (Car number and initial) (R/R or station)

CBP Port Director Final foreign destination _____ (For exportations only)

Consignee _____ (At CBP port of exit or destination)

Foreign port of lading B/L No. Date of sailing _____
(Above information to be furnished only when merchandise is imported by vessel)

Imported on the _____ (Name of vessel or carrier and motive power) (Date imported) (Last foreign port)
Flag on via _____

Exported from on Goods now at _____
(Country) (Date) (Name of warehouse, station, pier, etc.)

Marks and Numbers of Packages	Description and Quantity of Merchandise Number and Kind of Packages (Describe fully as per shipping papers)	Gross Weight in Pounds	Value (Dollars only)	Rate	Duty

G.O. No. _____ Check if withdrawn for Vessel supplies (19 U.S.C. 1309)

**CERTIFICATE OF LADING FOR TRANSPORTATION IN BOND
AND/OR LADING FOR EXPORTATION FOR**

(Port)
WITH THE EXCEPTIONS NOTED ABOVE, THE
WITHIN-DESCRIBED GOODS WERE:

Delivered to the Carrier named above, for delivery to the CBP Port Director at destination sealed with CBP seals Nos. _____
or the packages (were) (were not) labeled, or corded and sealed.

Laden on the—
(Vessel, vehicle, or aircraft)
which cleared for—
on _____ (Date)
as verified by export records.

(Inspector) _____ (Inspector) _____
(Date) _____ (Date) _____

I truly declare that the statements contained herein are true and correct to the best of my knowledge and belief.
Entered or withdrawn by _____

To the Inspector: The above-described goods shall be disposed of _____
For the Port Director _____
Received from the Port Director of the above CBP location the merchandise described in this manifest for transportation and delivery into the custody of the CBP officers at the port named above, all packages in apparent good order except as noted hereon.

Attorney or Agent of Carrier
CBP Form 7512 (02/12)

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