

South Florida Logistics and Trade Forum Export Compliance for International Trade Professionals

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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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**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. HSI

How a Typical Seizure Case Commences with U.S. Customs and Border Protection:

- U.S. Customs finds a violation, and places the merchandise on hold for “intensive examination”.



What Type of Merchandise is Subject to Seizure?

- Prohibited Merchandise (counterfeit, controlled substances)
- Restricted Merchandise (CPSC, FDA, Quota)
- Undeclared, unreported or smuggled merchandise (non-reporting of currency over \$10,000)
- Goods which aid or facilitate the illegal importation of merchandise

Federal Investigations for Import and Export Activities

- BIS
- OFAC
- ICE
- Criminal
- Administrative



Antidumping

CBP completed audits of importers of AD/CVD commodities, including aluminum extrusions, petroleum wax candles, steel nails, off-the-road tires, pencils, polyethylene retail carrier bags, ribbons, shrimp, solar cells, steel pipe, tapered roller bearings, tissue paper, wooden bedroom furniture, and wood flooring. Through these audits, CBP identified AD/CVD discrepancies with a value of approximately \$24.6 million and has collected approximately \$8.5 million to date. CBP is continuing to pursue collections of all unpaid duties.

CBP Priority Trade Issues

Priority Trade Issues (PTIs) represent high-risk areas that can cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the American people. They drive risk-informed investment of CBP resources and enforcement and facilitation efforts, including the selection of audit candidates, special enforcement operations, outreach, and regulatory initiatives.

Current Priority Trade Initiatives:

[Antidumping and Countervailing Duty \(AD/CVD\)](#)

[Import Safety](#)

[Intellectual Property Rights](#)

[Textiles/Wearing Apparel](#)

[Trade Agreements](#)

Intellectual Property Rights

- Is your merchandise or its packaging using any trademark, copyright or patent?
- If so, do you have the legal right to import those items into, and/or use those items in, the United States?
- Permission?
- License?



"Need I remind you, Doctor, that you signed over intellectual property rights to the lab?"

Free Trade Agreements

The United States is party to numerous trade agreements with other countries and is participating in negotiations for new agreements with a number of countries and regions of the world. Currently there are 14 Free Trade Agreements (FTAs). Information on each FTA can be found below.

[Australia Free Trade Agreement \(AUFTA\)](#)

[Bahrain Free Trade Agreement \(BHFTA\)](#)

[Central America-Dominican Republic Free Trade Agreement \(CAFTA-DR\)](#)

[Chile Free Trade Agreement \(CLFTA\)](#)

[Colombia Trade Promotion Agreement \(COTPA\)](#)

[Israel Free Trade Agreement \(ILFTA\)](#)

[Jordan Free Trade Agreement \(JOFTA\)](#)

[Korea Free Trade Agreement \(KRFTA\)](#)

[Morocco Free Trade Agreement \(MAFTA\)](#)

[North American Free Trade Agreement \(NAFTA\)](#)

[Oman Free Trade Agreement \(OMFTA\)](#)

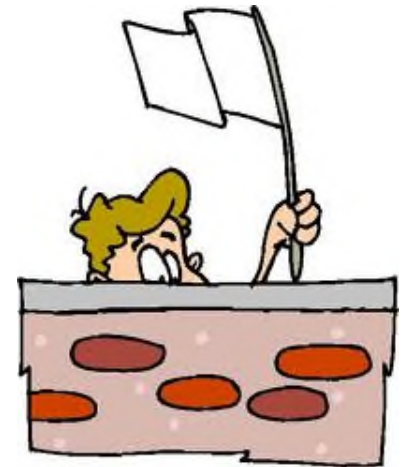
[Panama Trade Promotion Agreement \(PATPA\)](#)

[Peru Trade Promotion Agreement \(PETPA\)](#)

[Singapore Free Trade Agreement \(SGFTA\)](#)

Voluntary Self-Disclosure

- Turning yourself in: Bureau of Industry and Security
- Outline: Violations, The Process, Sanctions, & Disclosure v. Non-Disclosure



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