

Importing Food and FDA Requirements: Trends for 2013



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*Florida Customs Brokers & Forwarders
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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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Agenda

1. Mislabeling of imported seafood to avoid FDA examination
2. Transshipment of food such as shrimp and crawfish to circumvent payment to CBP of anti-dumping and countervailing duties
3. New FDA Import Alerts for food products
4. How best to respond to a Notice of FDA Action for imported products suspected of adulteration or mislabeling

FDA's Seafood List

FDA provides a list of acceptable market names for seafood. This list is searchable and can be found on FDA's website www.fda.gov.

Search 2012 FDA Seafood List

Complete Seafood List

TYPE	ACCEPTABLE MARKET NAME(S)	FDA REGULATION REFERENCE	COMMON NAME	SCIENTIFIC NAME <i>Latin binary</i>	VERNACULAR NAME(S)
V	Triggerfish		Starry Triggerfish	<i>Abalistes stellatus</i>	
V	Bream		Bream	<i>Abramis brama</i>	
V	Bass, Sea		Argentine Sea Bass	<i>Acanthistius brasiliensis</i>	
I	Cockle		Spiny Cockle	<i>Acanthocardia aculeata</i>	
V	Wahoo		Wahoo	<i>Acanthocybium solandri</i>	Kinifish/ Peto/ Guarapucu/ Ono/ Thazard Batard
V	Seabream or Porgie		River Bream	<i>Acanthopagrus berda</i>	
V	Cowfish		Honeycomb Cowfish	<i>Acanthostracion polygonus</i>	
V	Cowfish		Scrawled Cowfish	<i>Acanthostracion quadricornis</i>	
V	Tang or Surgeonfish		Doctorfish	<i>Acanthurus chirurgus</i>	
V	Tang or Surgeonfish		Blue Tang	<i>Acanthurus coeruleus</i>	Blue Surgeon/ Surgeonfish/ Barbero/ Blue Doctorfish
V	Tang or Surgeonfish		Elongate Surgeonfish	<i>Acanthurus mata</i>	
V	Tang or Surgeonfish		Yellowfin Surgeonfish	<i>Acanthurus xanthopterus</i>	
I	Snail or Escargot		Giant African Snail	<i>Achatina fulica</i>	
V	Sturgeon		Siberian Sturgeon	<i>Acipenser baerii</i>	
V	Sturgeon		Shortnose Sturgeon	<i>Acipenser brevirostrum</i>	
V	Sturgeon		Yangtze Sturgeon	<i>Acipenser dabryanus</i>	
V	Sturgeon		Lake Sturgeon	<i>Acipenser fulvescens</i>	
V	Sturgeon		Russian Sturgeon	<i>Acipenser gueldenstaedtii</i>	Nisetrü/ Waxdick/ Kura Sturgeon/ Persian Sturgeon/ Azov-black Sea Sturgeon
V	Sturgeon		Green Sturgeon	<i>Acipenser medirostris</i>	Sakhalin Sturgeon/ Saghalein Sturgeon/ Japanese Sturgeon
V	Sturgeon		Japanese Sturgeon	<i>Acipenser multiscutatus</i>	
V	Sturgeon		Adriatic Sturgeon	<i>Acipenser naccarii</i>	
V	Sturgeon		Thorn Sturgeon	<i>Acipenser nudiiventris</i>	
V	Sturgeon		Atlantic Sturgeon	<i>Acipenser oxyrinchus</i>	American Atlantic Sturgeon/ Sea Sturgeon/ Sharpnosed Sturgeon

Transshipment to Avoid Countervailing Duties

- In *U.S. v. Chau Shing Lin*, a company transshipped Vietnamese shrimp through Cambodia and intentionally labeled it, as product of Cambodia to avoid anti-dumping duties.
- It imported over 15 million pounds of farmed shrimp, with a declared value of over \$42 million.
- The problem? Cambodia only produced a total of 385,000 pounds of farmed shrimp during that time period.

Transshipment to Avoid Countervailing Duties

Company's sentence:

- three years probation,
- a fine of \$700,000,
- an additional community service payment of \$300,000
- forfeit all remaining inventory of the falsely labeled fish.

Intentional Mislabeling of Seafood

Sterling Seafood Case

- Sterling Seafood Corporation (SSC) instructed its Vietnamese supplier to identify the Vietnamese catfish as “grouper” on commercial contracts, purchase orders, and other documents because grouper was not subject to the 63.88% anti-dumping duties that Vietnamese catfish was subject to.



Sterling Seafood Case **CEO Sentencing**

The former CEO of SSC was sentenced to 22 months in prison for involvement in the catfish scheme which evaded over \$60 million in federal tariffs and antidumping duties.

Intentional Mislabeling of Seafood Aftermath of *Sterling Seafood* Case

- The CEO sentencing led to a conviction of 5 companies and 8 individuals associated with various Vietnamese catfish processors, U.S. importers, and seafood wholesalers.
- The defendants were ordered to pay **\$444,000** in fines, ordered to forfeit **\$12,197,930**, and pay **\$64,173,839** in restitution.
- The subjects of the investigation were sentenced to a **total of 97 months of incarceration, six months home confinement and 162 months of probation.**

Adulterated

- A food shall be deemed to be adulterated:
 - (1) if it bears or contains any poisonous or deleterious substance which may render it
 - Injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or
 - (2) If it bears or contains any added poisonous or added deleterious substance
 - (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance

Misbranded

- A food shall be deemed misbranded if:
 - (1) its **labeling** is false or misleading in any particular way; or
 - (2) its **advertising** is false or misleading in a material respect
 - If it is offered for sale under the name of another food
 - If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation” and, immediately thereafter, the name of the food imitated
 - If its container is so made, formed or filled as to be misleading.

Recent Seafood Import Alerts (cont.)

- **Import Alert # 16-81**
- **Published Date:** February 25, 2013
- **Type:** DWPE
- **Import Alert Name:** DWPE of Seafood Products Due to the Presence of Salmonella
- **Reason for Alert:** Division of Import Operations and Policy (“DIOP”) has received recommendations from districts for DWPE of seafood products due to Salmonella contamination from specific manufacturers/shippers.

Removal from Import Alert List

- Regulatory Procedures Manual :
- Generally, one would need:
 - **Five consecutive non-violative commercial shipments,**
 - **One of the five non-violative entries should be audited by the FDA,**
 - The five shipments must be **over a reasonable time period**, not one day
 - ***A Petition must be filed with the FDA requesting that the importer be removed from the automatic detention list***

QUESTIONS??



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