

U.S. Customs Seized My Merchandise: *Now What?*

By Peter A. Quinter and Jennifer Diaz, Ft. Lauderdale

Every day, U.S. Customs and Border Protection¹ officers at airports, seaports and other border crossings, stop, examine, detain and seize merchandise from both travelers and commercial cargo importers and exporters. The process of recovering your property can be a distressing one, fraught with bureaucratic delays. Fortunately, there is a set of rules² that U.S. Customs must follow, and knowing those rules will give you an advantage.

U.S. Customs officers may examine cargo to look for illegal drugs, counterfeit merchandise, merchandise from a country with which the U.S. has an embargo, food or medical devices not in compliance with FDA regulations, or motorcycles not approved by the Environmental Protection Agency (EPA), to name a few examples. To illustrate the regulatory framework governing the detention of merchandise at U.S. borders, throughout this article we will reference a sample case of imported motorcycles, which, in addition to Customs regulations, must also comply with EPA regulations.

While held by U.S. Customs, detained cargo is transferred to a Centralized Examination Station (CES) where it is separated and intensively examined by U.S. Customs officers. Customs has 35 days from the date of arrival in the United States to detain and examine the merchandise and to make a determination of admissibility into the U.S.³ During that period of time, it is the obligation of U.S. Customs to provide the importer, its customs broker, and/or customs attorney with an explanation for the detention. Pursuant to Customs regulations, the U.S. Customs officer must issue a written detention notice stating the specific reason for the detention; the anticipated length of the detention; the nature of the tests

or inquiries to be conducted; and the nature of any information which, if supplied to U.S. Customs, may accelerate the disposition of the detention. In practice, however, detention notices do not typically include the nature of the tests or inquiries to be conducted or any information which, if supplied, may accelerate the disposition.⁴ In the case of imported motorcycles, the Customs officer may also need to contact the EPA to assess whether there is a violation of EPA regulations.

U.S. Customs Regulations further require that the cargo be seized or released within 35 days.⁵ Unfortunately, this is all too often ignored. The problem is that U.S. Customs must rely upon other federal agencies to advise whether or not a violation has occurred. In the case of imported motorcycles, for instance, the Customs officer may need to confer with the EPA, as well as provide digital photographs and paperwork to EPA officials in Washington, D.C., for their review and recommendation.

Additional delays often occur as a result of communications having to travel through various hands along the chain of command at U.S. Customs and other agencies, rather than directly between the supervising Customs officials and lead EPA attorneys, for example. The exchange of information is slow, and 35 days pass quickly.

Hence, despite the 35-day requirement, Customs may not make a determination to release or seize the detained property for 60 or more days after the initial detention. Expressing your frustration or making repeated calls to a particular Customs officer may not be helpful, as he or she may similarly be waiting for an answer from someone else. Knowing who to call and when is the key to getting your cargo released.

The customs attorney hired to assist the importer needs to know the

internal procedures of U.S. Customs, as well as the other agencies' laws and regulations, to identify whether and when to speak to a U.S. Customs officer or other government official. Getting involved early in the detention process is one of the most effective ways to assist Customs in efficiently making a determination of whether a violation has occurred, and to avoid a seizure or other negative action by Customs. For example, if an electronic product is a suspected counterfeit, showing a U.S. Customs Import Specialist⁶ the export license from Bluetooth or Apple, as the case may be, could avoid a lengthy, expensive and totally unnecessary seizure process with Customs.

As another example, if U.S. Customs believes there is a discrepancy in the terms of a product's export license, to avoid an unnecessary seizure one might request a Licensing Officer from the Bureau of Industry and Security of the U.S. Department of Commerce in Washington, D.C., to speak directly with the U.S. Customs officer on the Anti-Terrorism Trade Enforcement Team to clarify any such suspected discrepancy. In our sample case, speaking with EPA directly is generally a desired alternative to clarify whether the motorcycle is compliant with EPA regulations.

If a violation does occur, U.S. Customs will seize the merchandise and transport it from the Centralized Examination Station to an official property warehouse. The merchandise will remain in the warehouse until Customs authorizes its release. Throughout this process, storage fees accrue and must be paid to the warehouse as a condition of releasing the merchandise.

Once the merchandise is seized, the Customs officer then forwards it to the Fines, Penalties, and Forfei-

continued, next page

MY MERCHANDISE

from previous page

tures Office (FP&F), where an FP&F paralegal reviews the file and prepares a formal, written seizure notice, which is mailed to the alleged violator. As practicing customs attorneys, our standard operating procedure is to notify FP&F of our representation of an importer or exporter whose goods have been seized by U.S. Customs so that FP&F forwards the seizure notice directly to our office. The notice will identify the cargo and where it was seized, as well as the legal basis for the seizure.⁷

Upon receipt of a seizure notice, Customs regulations require the alleged violator to file a petition with U.S. Customs within 30 days to challenge the grounds for seizure.⁸ The petition is the means by which the owner of the cargo may seek to persuade U.S. Customs to release the seized shipment. The petitioner may contest the occurrence of any violation and request that the merchandise be released, or, alternatively, acknowledge the occurrence of a violation but nonetheless request a release due to mitigating factors. The petition should adhere to the guidelines set forth by U.S. Customs in 19 C.F.R. part 171.

U.S. Customs has also published a very helpful handbook⁹ about seizure case processing.

In our sample case, the EPA will determine whether U.S. Customs will handle the seizure process on their behalf, or if the EPA will form a separate Administrative Settlement Agreement (ASA) for the importer to comply with, in addition to the U.S. Customs decision. Typically, an EPA ASA will also include a penalty fee to be paid.¹⁰

Eventually,¹¹ U.S. Customs will either grant the petition and release the seized merchandise, or deny the petition and retain the merchandise. If the petition is denied, a supplemental petition or offer in compromise may then be submitted to U.S. Customs. Typically, the supplemental petition will state additional claims not included in the original petition. Alternatively, the offer in compromise¹² is an attempt to negotiate with U.S. Customs and offer a monetary amount to settle the dispute and release the cargo.

In summary, the administrative petition process with U.S. Customs can be a long one; however, there are a few key pointers to keep in mind:

1. Ensure that merchandise complies with all relevant laws and regulations applicable to the particular product prior to importing it into

the U.S.;

2. If U.S. Customs detains your products, contact a knowledgeable customs attorney or broker who can seek to demonstrate that there is no violation; and
3. If U.S. Customs seizes your products, make certain your customs attorney knows the policies, procedures, and practices of U.S. Customs to pursue the release of the merchandise.



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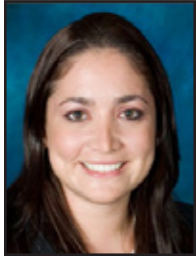
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Endnotes:

- 1 U.S. Customs and Border Protection is within the U.S. Department of Homeland Security. U.S. Customs' priority mission is preventing terrorists and their weapons from entering the U.S., while also securing and facilitating trade and travel and enforcing hundreds of U.S. regulations.
- 2 U.S. Customs laws may be found at Title 19 of the United States Code, and the implementing regulations may be found at Title 19 of the Code of Federal Regulations.
- 3 See 19 C.F.R. § 151.16 – Detention of Merchandise.
- 4 See 19 C.F.R. § 151.16(c)(1)-(5).

5 See 19 C.F.R. § 151.16(e).

6 The Import Specialists' primary mission includes detecting and preventing violations of U.S. customs laws and import/export regulations. They are tasked with verifying the authenticity of merchandise if U.S. Customs officers deem it counterfeit. See http://www.cbp.gov/linkhandler/cgov/careers/customs_careers/import_specialist/import_specialist.ctt/import_specialist.pdf.

7 See 19 C.F.R. § 162.31(b).

8 See 19 C.F.R. § 171.2.

9 The Handbook is titled "What Every Member of the Trade Community Should Know About: Mitigation Guidelines: Fines, Penalties, Forfeitures and Liquidated Damages" and may be found at: http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp069.ctt/icp069.pdf.

10 The EPA lists all Settlement Agreements on its website at <http://cfpub.epa.gov/compliance/civil/programs/caa/importation/>.

11 Currently, there is no mandated time frame in which U.S. Customs must respond to a petition. See 19 C.F.R. § 171.21 (addressing written decisions by U.S. Customs but not the time frame in which they must be submitted).

12 An offer in compromise should be submitted in accordance with 19 C.F.R. § 171.31.



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