

International Trade and Transportation Law Newsletter



Thou Shalt Not Lie To Federal Authorities

(The following is the 5th Commandment from the 10 Commandments of Import and Export Compliance, a popular presentation delivered by Oscar Gonzalez, Attorney)

There are numerous compliance traps to avoid. Maybe the most dangerous trap is lying to federal authorities.

The Fifth Commandment is: *Do Not Lie To Federal Authorities*. If you lie, you can go to prison for up to five years for each lie under 18 USC 1001, one of the most reliable tools available to federal enforcement officials.

Thousands of people have been put away thanks to 18 USC 1001. If you can think of someone famous that's gone to prison, there's a good chance that it was this provision that sent her or him there. It happened to Martha Stewart. It happened to Bernie Madoff.

18 USC 1001 can come up in many situations, for example, when you sign or submit a petition, license application, or correspondence with the government. You may have seen 18 USC 1001 in fine print on government forms and on government websites, but you are presumed to know the law. The Government does not have to tell you that you can be punished for lying.

18 USC 1001 also pops up during investigations. People start playing fast and loose with the truth when they feel cornered. You can be found guilty for lying indirectly or even without saying or writing anything. If a special agent asks you, "which way did they go?" and you point in the wrong direction intentionally, you just violated 18 USC 1001.

Customs brokers are as apt to violate 18 USC 1001 as anyone.

US v. Segall is a 1987 case out of the 9th Circuit Court of Appeals. A Mexican importer hired a US customs broker to pay countervailing duties to the US Department of

Commerce. Later the US Department of Commerce decided that the Mexican importer was owed a \$173,000 refund. The Commerce Department mailed checks for that amount to the customs broker for the benefit of the Mexican importer. US Customs sent a couple of special agents to investigate after the customs broker deposited the checks into her bank account without forwarding any of the money to the Mexican importer. The broker explained to the special agents that she received the checks only two or three weeks earlier, that she had received only a small portion of the checks, and that checks had only recently started coming in. The court found that each of these lies constituted a violation under 18 USC 1001. The case history does not say whether the customs broker went to prison for stealing the \$173,000, but she did go to prison for lying to the special agents. That is the dangerous thing about 18 USC 1001, you can be found guilty even if the feds do not get you for the underlying crime. Martha

Stewart went to prison for lying to the FBI, not for insider trading.

One of the most interesting 18 USC 1001 cases is *US v. Stephenson*, a 1990 opinion from the US Second Court of Appeals. This case shows that you can be found guilty even if you tell the truth. Stephenson, the defendant, was a licensing officer with the US Department of Commerce. He solicited a bribe from a small exporter to approve an export license. The exporter tipped off the FBI, which set up a sting. As part of the sting, the FBI instructed the exporter to call Stephenson to arrange payment of the bribe, but stings are elaborate hoaxes that must be carried off perfectly to work. This sting was not perfect. The FBI had instructed the exporter to call Stephenson's from FBI headquarters. Stephenson had caller ID. Realizing the jig was up, Stephenson tried to preempt accusations against him by telling FBI agents that the exporter was trying to bribe him. It didn't work. While Stephenson's statement was true, he was trying to hide his solicitation of the bribe, and as a result, a judge ordered Stephenson to take a long sabbatical from the Department of Commerce at the local federal penitentiary.



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Gasoline Quiz Quiz

The fortunes of individuals, companies, and countries rise and fall with the price and availability of gasoline. International trade would not exist as we know it without this hydrocarbon mixture. But how much do you know about gasoline? Take this quiz and find out. It's free and no registration is required. Instant scoring. Here is the link: www.exportimportlaw.com/august2009quiz/

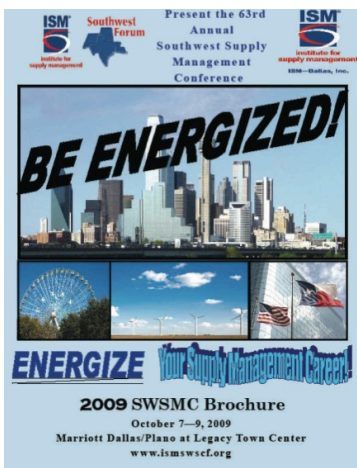
Other Quizzes

If you like this month's quiz, try our other quizzes:

Iran, Cuba, and N. Korea
Pirates
Fines and Penalties
World Holidays
Halloween
Alexander Hamilton
China
Export
News Update

www.exportimportlaw.com/july2009quiz/
www.exportimportlaw.com/may2009quiz/
www.exportimportlaw.com/february2009quiz/
www.exportimportlaw.com/december008quiz/
www.exportimportlaw.com/october2008quiz/
www.exportimportlaw.com/september2008quiz/
www.exportimportlaw.com/august2008quiz/
www.exportimportlaw.com/july2008quiz/
www.exportimportlaw.com/april2008quiz/

Energize Your Supply Management Career! ISM Conference Coming To Dallas October 7-9, 2009



While we are on the subject of gasoline and energy, this is a good time to announce “*Energize Your Supply Management Career*,” the 63rd Annual Southwest Supply Management Conference in Dallas, Texas, from October 7-9, 2009.

Our law firm is proud to announce that it is presenting on Wednesday, October 7, the first day of the conference. Our law firm’s topic is “Import and Export Compliance for the Energy Industry,” 10:15-11:45 am, Track 6, Session A.

For more information, including hotel reservations, go to: www.ismswscf.org/swpc/.

Exporter Voluntary Self-Disclosures Survey

This Month's Survey:
Are Voluntary Self-Disclosures a Good Idea For Exporters?



Enforcement officials promise to mitigate penalties for exporters who file VSDs, but many exporters still feel unfairly penalized for filing VSDs. This

month's survey asks: *Is it a good idea for exporters to file VSDs?* No registration is required and your identity will remain anonymous. The survey consists of multiple-choice questions. Here is the link:

www.exportimportlaw.com/exportervsdssurvey/

Findings From Post-Entry Amendments Survey

Last month's survey on Post-Entry Amendments produced fascinating results. According to CBP, importers who file PEAs will still *"be subject to the usual penalties, liquidated damages, and other administrative sanctions for any Customs laws violations."* Our survey was trying to determine if CBP ever penalized importers for filing PEAs.

Fifty-two companies completed our survey.

We asked: In response to filing a PEA, have you ever been subject to an enforcement action (fine, penalty, forfeiture, seizure, liquidated damages, rate advance, investigation, etc.) from CBP or any other agency?

Eight people, or fifteen percent, said yes, the rest said no.

Thirteen people or twenty-five percent answered yes when we asked whether they knew of any importer other than person taking the survey who has been

subject to an enforcement action (fine, penalty, forfeiture, seizure, liquidated damages, rate advance, investigation, etc.) or suspected that this happened, but couldn't prove it, for filing a PEA.

When we asked how much people trusted PEAs, sixteen people (25%) trust PEAs completely and have no qualms about filing them. Twenty people (38%) claim that PEAs are valuable, but should be filed only as a last resort. Four (8%) said PEAs are dangerous and should be filed only as a last resort.

Several people submitted written responses that are nuanced.

Here is one such answer from a customs broker:

As a Customs broker, we file PEAs regularly on behalf of our clients. The majority of (our) PEAs are used to correct errors in entries, such as incorrect tariff number missing FTA indicator, typographical error, etc. Additionally, we do occasionally file PEAs when clients notice an error in their value, invoice description, etc. However, the large majority of the PEAs that we file are for refund of overpaid duty. On lesser occasion, an importer may request we make correction on entry resulting in payment of duties due. We explain to importer that this voluntary payment does not protect them from CBP coming back to them with further investigation or even punitive actions, however we have not personally experienced Customs taking such action on PEAs that we have filed. But I must mention that if there is request for corrections resulting in large amounts of duties or entries, we would recommend the importer consult with attorney for possible alternative action such as prior disclosure. From our experience, although we do not recommend importers consistently file or request often for Brokers to file PEAs on their behalf, we find that PEAs are useful tools when used properly, to make corrections on entries and receive refunds of overpaid duty or pay additional duty due. Obviously, if importers continually file PEAs with Customs, there will become an issue of failure to use reasonable care in submitting entries, and be subject to CBP actions against them.

Here is a view from a high volume importer who has imported for many years:

PEA's are useful, but they have to be monitored very closely in that a Voluntary Disclosure might be the correct way to handle the issue.

EXCERPTS FROM ONLINE INTERNATIONAL TRADE NEW

Reader: We provide links to full stories only in our electronic newsletter.

House Approves Measure to Improve Food Safety

Bloomberg

"The U.S. House approved the biggest overhaul of food-safety laws in decades in the wake of outbreaks of food-borne illnesses that sickened, killed and left industries fighting to woo back wary consumers...The FDA, which currently has the authority to recall a handful of products including infant formula, would get expanded power under the bill to have more tainted items yanked off store shelves. The agency also would be allowed to impose quarantines restricting the movement of food deemed a threat to public safety. The bill would require 360,000 domestic and foreign food facilities to be inspected more frequently, with those deemed the riskiest examined at least once a year. Plants would have to register annually with the government so regulators know 'who is doing what,' said Dingell. Produce and processed foods would have to bear labels identifying their countries of origin. The measure directs the Health and Human Services secretary to determine by the end of this year whether bisphenol A, a chemical used in plastic food containers, presents a risk to infants, pregnant women or young children. It also calls for a study of whether antibiotics used in animals contribute to antibiotic resistance in humans.

In Venezuela, Plantations of Cacao Stir Bitterness

(New York Times)

"Venezuela produces about the same amount of cacao as it did three centuries ago: 15,000 tons a year, less than 1 percent of global cacao output. But that amount stirs the passions of critics and devotees, turning a luxury crop destined for foreigners into a contentious, and sometimes violent, political issue. Cacao from here is so desirable that European chocolate makers sometimes engage in cut-throat competition to gain access to it. Chocolatiers talk of the unique factors here on the Caribbean's edge in a way that resembles the *goût de terroir*, or taste of the earth, crucial to fine wines. "Venezuela is in a league of its own," said Gary Guittard, a California chocolate maker who buys Venezuelan cacao. "It takes years to develop the uniqueness of the best cacao, maybe 20 or 30 years, maybe 100, so other nations need to catch up." Viewed as a treasure abroad, cacao is seen differently by many Venezuelans, from the president to the poor. A loophole for this nature reserve allows cacao haciendas to dot the forest, near villages populated by descendants of African slaves and near poor migrants who live in squatter villages in the park."



CBP Selects Broker Self-Assessment Pilot Participants

(Imperial Valley News)

Washington, DC - United States Customs and Border Protection completed the review of the 26 brokers that applied to participate in the Broker Self-Assessment Outreach Pilot. Four brokers have been selected to participate in the year-long pilot, which will help CBP determine whether to formally implement the BSA program and what changes might be needed to ensure its effectiveness.

Under the BSA program pilot, participating customs brokers will update and improve internal controls, perform periodic testing of these internal controls, and disclose to CBP deficiencies discovered through the testing. The primary goal of the pilot is to ensure a high level of broker compliance with CBP laws and regulations.

Only-in-Hollywood FCPA Trial Set to Start Tuesday

(American Lawyer (American Litigation Daily))

"We've said before that there are few areas of litigation hotter than Foreign Corrupt Practices Act cases, but we have to confess that we weren't exactly thinking of movie producers as defendants. (But then a handbag magnate and an ex-Congressman weren't at the top of our list, either.) The third Foreign Corrupt Practices Act trial of 2009 is set to begin on Tuesday, and it's an only-in-Hollywood tale.

As our colleagues at the National Law Journal report, the L.A. U.S. Attorney's office has charged Beverly Hills-based producers Gerald and Patricia Green with paying Thai official \$1.8 million between 2002 and 2006 in order to obtain \$14 million worth of contracts. Prosecutors claim the couple paid off Juthamas Siriwan, the former governor of the Tourism Authority of Thailand, which puts on Bangkok's international film festival.

The Greens, whose recent credits include the Werner Herzog picture "Rescue Dawn," have pleaded not guilty to all 22 counts. (According to the Internet Movie Database, the Greens also produced a lesser-known 1998 film called "Chick Flick," wherein "two young filmmakers get into trouble south of the border while trying to raise money for their movie." What's that old saying about life imitating art?")

Helmerich & Payne Agrees to Pay \$1 Million Penalty to Resolve Allegations of Foreign Bribery in South America

(US Dept. of Justice)

"Helmerich & Payne Inc. (H&P) has entered into an agreement with the Department of Justice to resolve improper payments by H&P to government officials in Argentina and Venezuela in violation of the Foreign Corrupt Practices Act (FCPA), Assistant Attorney General Lanny A. Breuer of the Criminal Division announced today. H&P, a Delaware corporation, is headquartered in Tulsa, Okla., and is listed on the New York Stock Exchange. The company provides oil drilling rigs, equipment and personnel on a contract basis, primarily in the United States and South America, with subsidiaries in both Argentina and Venezuela".

Manufacturer Settles with FTC for Making Misleading Made-in-the-USA Claims

(Federal Trade Commission)

"A manufacturer of magnifiers and other desktop and portable vision aids has agreed to settle Federal Trade Commission charges that it falsely claimed its products were 'Made in the U.S.A.' The proposed settlement prohibits the company from deceiving consumers about the degree to which its vision-related products are made in the United States. Enhanced Vision Systems markets computer- and television-screen magnifiers and other devices to enhance vision. Because several of the company's products contain a significant portion of foreign components, the 'Made in the U.S.A.' claim is deceptive, according to the FTC complaint. According to the Commission's 1997 U.S. Origin Claims Enforcement Policy Statement, for a product to be advertised or labeled as 'Made in the U.S.A.,' the product must be 'all or virtually all' made in the United States - that is, all significant parts and processing must be of U.S. origin, and the product should contain no (or negligible) foreign content. The proposed settlement bars Enhanced Vision Systems from representing the extent to which any vision-related product or package is made in the United States unless the representation is true and not misleading. The settlement contains standard reporting and record-keeping provisions to allow the agency to monitor compliance."

The Best Customs Broker Exam Prep Course Coming to Beautiful San Antonio, Texas!

What if you could study for the customs broker exam in one of the nation's nicest places to visit? GRVR Attorneys and the International Trade Center of San Antonio are happy to announce that the best customs broker exam prep course will be held in San Antonio, March 15 - 18, 2010. Sign up now and start studying early.

If you are studying for the October 2009 customs broker exam, we still have openings in these three boot camps. Space is limited and going fast!

Houston: August 10-13, 2009
Los Angeles: August 24-27, 2009
Dallas: September 7-10

For more information, go to: www.bestcustomsbrokerscourse.com.



Danger Sign: The Boring Instructor or How Not To Prepare For The Customs Broker Exam

Are you enrolled in a customs broker exam prep course? Does your instructor drone on and on from his/her notes during class? Does your instructor read regulations expecting you to somehow absorb and then regurgitate them, in coherent form no less, during the real exam? Does your instructor not even care whether you learn?

If you answered yes to any of these questions, then you are wasting valuable time. Your prep course may be less than useless, it may be harming your chances of passing the customs broker exam.

Your prep course should be interactive, each class different from the previous one, with students and instructor working together to enhance everyone's chances of passing. Students must change their focus to shore up weaknesses and to keep up with the lessons, but the instructor must also adjust course lessons to accommodate the immediate needs of most of the students. Your course should customize homework to enhance your chances of success. It is a tough slog, but it must be a slog, a methodical advance on the likely topics to be tested until each student achieves an average passing rate or, better yet, a cushion above the passing rate.

If you find yourself with a boring instructor or in a useless prep course, consider switching. There is still sufficient time before the October 2009 exam to unlearn bad habits, say goodbye to boring instructors, and latch on to a winning course.

We offer 50% off our course if you switch. Contact us for more details: www.bestcustomsbrokerscourse.com.

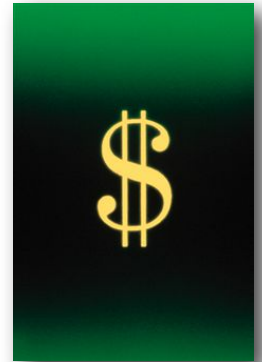


Recession Buster For Companies: Prepaid and Flex Legal Services

The deep recession is forcing companies to save money by cutting back, cutting hours, and cutting expenses. Lawyers are vital to compliance, but they can also be expensive. Any law firm that you hire should provide you with excellent legal services, but it should also seek to accommodate your budget if possible. Your law firm should, of course, itemize all charges and prepare budgets to allow you to approve and anticipate all charges. There should be no surprises. But your law firm can even go beyond these basic steps.

Your law firm should offer non-traditional alternatives to the pure billing cycle. There are flat fees, hourly rates, blended flat fees/hourly rates, hourly rates plus a contingency fee, and other value-based alternatives. There is also a subscription option that allows companies, big and small, to prepay for legal services. Prepaid legal services allow companies to keep an experienced law firm on retainer and use legal services when smaller tasks and assignments arise, rather than having access to vital legal services only on large projects.

We at GRVR are sensitive to our clients' budgetary constraints and offer many of these options. Please feel free to contact us to explore the options available to you.



PHR

Physicians for
Human Rights

Do-Gooder Corner: Physicians For Human Rights physiciansforhumanrights.org

As our country debates the merits of overhauling our health system, this is a good time to recognize those doctors that travel the world on gutsy, humanitarian missions. One of the best groups is Physicians for Human Rights (PHR). The following is from PHR's website:

Physicians for Human Rights mobilizes health professionals to advance health, dignity, and justice and promotes the right to health for all. Harnessing the specialized skills, rigor, and passion of doctors, nurses, public health specialists, and scientists, PHR investigates human rights abuses and works to stop them. Our research takes us to conflict zones, to AIDS-ravaged Africa, to US prisons and juvenile detention centers—and our advocacy brings us to the offices of national and international policymakers. The courts, decision makers and the media have come to rely on our credibility and expertise. Motivated by moral urgency, based on science, and anchored in international human rights standards, PHR's advocacy advances global health and protects human rights. PHR is building a new movement for human rights based on the solid foundation of two decades of investigation, advocacy, and accomplishment.

Calendar

Free Compliance Workshops

GRVR provides free compliance workshops to the trade community. The workshops are in-person seminars, not webinars. You may register at www.exportimportlaw.com or info@exportimportlaw.com.

January	February	March
April	May	June
July	August	September
October	November	December

- Aug 19 *Customs Valuation*
12 noon - 1 pm (Irving, Texas)
- Sept 16 *NAFTA Verifications* (Irving, Texas)
- Oct 14 *Fines, Penalties, Forfeitures, & Liquidated Damages*
12 noon-1 pm (Irving, Texas)

Webinars (Free)

Aug 26 *The Latest Developments in International Trade*
You may register at www.exportimportlaw.com or info@exportimportlaw.com. Only the first 15 people will be allowed to attend.

Webinar (\$99 Registration)

Foreign Corrupt Practices Act, August 13, 2009, 11 am-12 noon Central
Cost: \$99 per line. Register at www.exportimportlaw.com/courseregistration.php

Seminars/Conferences:

Energize Your Supply Management Career Conference, Institute for Supply Management, October 7-9, 2009
Dallas, Texas www.ismswscf.org/swpc/

Courses:

The Best Customs Broker Exam Review Course
www.bestcustomsbrokercourse.com

- year-round study
- guarantee you will pass
- weekly study sessions
- personalized homework
- 94% pass rate
- demo, 24/7 online study material
- multiple-day boot camps in different cities
- glowing testimonials
- 50% off for switching from another prep course

GRVR Attorneys

Gonzalez Rolon Valdespino & Rodriguez,
LLC, Attorneys
(214) 720-7720
(214) 720-6076 fax
(800) 256-2013
info@exportimportlaw.com
www.exportimportlaw.com

Dallas · Washington, DC · San Antonio ·
Mexico City · Sao Paulo, Brazil · Paris,
France

For two decades, GRVR has delivered excellent legal representation to our clients. With offices in six cities, four countries, and three continents, we can fill your legal needs regardless of your location.

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