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Getting CBP To Issue Rulings In Your Favor

Unlike some other federal agencies, CBP makes its rulings available to the public and in searchable format through its online service called [CROSS or Customs Rulings Online Search System](#).

That's the upside. The downside

is that the majority of the rulings do not provide helpful analysis. Indeed, most provide scant illumination and this lack of logic undermines the value of this online cache, but weirdly allows a lawyer to perform wonders on your behalf.

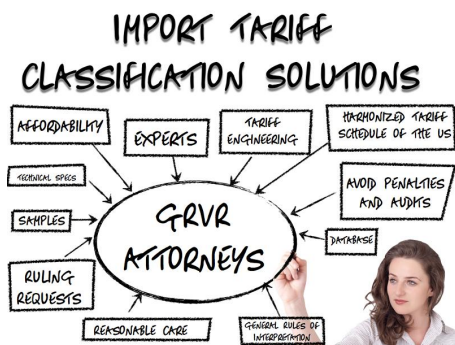


Our nation's laws (state and federal) are premised on transparent, readily available precedent. We have so many rules, statutes, and regulations that the people interpreting these look to how other arbiters decided similar fact situations. Of course, similar does not mean duplicate, so rules of thumb are needed (called the General Rules of Interpretation in tariff classification parlance), as is the logic that was previously employed. It is decision-making by analogy. Previous rulings or opinions are consulted not just because they are helpful, but because earlier precedent must be followed to the extent it is applicable. A precedent is given greater influence if a superior authority within the same chain of command hands it down. It is a Byzantine construct that even lawyers and judges can find dizzying, but its organic, malleable nature allows for limited self-correcting to take place. This is where it pays to use a lawyer.

Lawyers, if they are worthy of their licenses, appreciate that there are few absolutes, few areas where the law is permanently, indelibly carved in marble.

A competent legal advocate comes in handy when importers request CBP rulings, sometimes even overturning what appeared to be iron-clad precedent. CBP concedes that it makes mistakes by periodically issuing Revocations Letters published in the Customs Bulletin and on CROSS. CBP appreciates that its own rulings shouldn't even be followed. This is not surprising. CBP officials who issue rulings rarely undergo legal training. They may unthinkingly follow shoddy rulings issued by CBP and ignore court cases that go the other way.

The point is don't automatically give up even in the face of CBP rulings that seem to go against your interests. It's possible that CBP's rulings that bar your way are wrong and are mere eggshells awaiting to be pulverized at the feet of your irresistible logic. View all your submissions, not just ruling requests, to the government as opportunities to advocate. You should not expect great results if you are submitting bare bones, cookie cutter requests for binding rulings. Make your arguments compelling from the get-go. Invoke overwhelming legal precedent to support your stance. There is much at stake. Not only should you be trying to avoid classification penalties (CBP reserves the right to issue these whenever an importer misclassifies imported items even when there is no duty loss), but you also trying to limit any import duties that you have to pay.



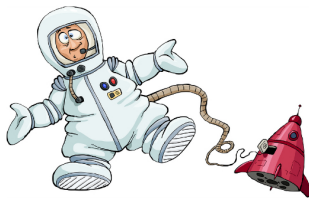
Need Help With HTSUS Tariff or Export Classification?

Whether your company needs to classify one item or thousands of parts, our lawyers and customs brokers can help. Affordable, quick, and scalable, we will develop a plan to fit your

company's compliance needs. For more information, contact us at

info@exportimportlaw.com or (800) 256-2013, ext. 1.

OUT OF THIS WORLD



TRIVIA

- * On July 24, 1969, astronauts Neil Armstrong, Buzz Aldrin, and Michael Collins had to [clear customs](#) in Honolulu after splashing down in the ocean on their way back from the first moon landing. They declared moon rock and moon dust samples and listed Cape Kennedy in Florida and the moon as the places they were coming from. They listed Apollo 11 as their flight number and ominously responded "to be determined" to the question on the form that asked whether there was any other condition on board which may lead to the spread of disease.
 - * Under HTSUS 9808.00.80 and 14 CFR 1217, stuff that NASA launches into space comes back duty free and does not have to clear US Customs.
 - * Free-trade agreements, including NAFTA and the Chile-USA FTA, actually use the term "outer space" to distinguish a certain type of imported item.
 - * In [NY 861960](#) (1991), CBP classified Magic Moon Rocks under 9503.90.6000, Other toys (except models), not having a spring mechanism.
 - * US CBP seized a moon rock that a Florida businessman was trying to import into the USA. President Nixon had given to the President of Honduras, but was stolen property when then the businessman bought it. The rock was eventually forfeited and returned to the Honduran people.
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W h a t ' s U p W i t h E x p o r t b y

O s c a r G o n z a l e z , A t t o r n e y



When the Export Administration Regulations were amended in 2007 to allow penalties of up to \$250,000 per violation (five times the previous amount), the trade community shuddered at the pain it anticipated that the new penalty amounts were about to inflict. It was commonly projected that exporters would routinely pay millions of dollars in export penalties. The BIS had up that point heaped penalties on exporters and forwarders so that a single shipment could result in multiple penalties. Moreover, the BIS was infamously stingy with exporters who filed voluntary self-disclosures, reluctantly and barely mitigating penalty amounts.

It appears that those fears were exaggerated. While export penalties still sting and companies must continue to invest in good export compliance programs, the penalties are nowhere at the levels once feared. Nor are there as many penalty cases. At least that is what I deduce from past couple of years of penalty cases found on the [BIS FOIA page](#). The BIS lists a few cases where it imposed penalties in the millions of dollars, but most penalties are much smaller. It also appears that enforcement authorities are cracking down on individuals, not companies, and the companies it does target tend not to be huge.

What explains all this? I did not consult with export enforcement officials for this article. I doubt any official would ever concede that her or his agency has become gentler and kinder to violators. They may point to the recent spate of hefty fines imposed by the Office of Foreign Assets Control against violators of US sanctions laws. They may not even be aware that a letup in enforcement is happening, if it is indeed happening. But assuming that there is a decrease in the intensity of enforcement, I speculate that the Obama Administration's efforts to boost exports is the trigger. Almost from his first day in office, President Obama has tried to revive the US economy by commanding the federal government to do everything possible increase the volume of exports. It has been an exporter-friendly administration, even moving a sizable chunk of items from the scarier State Department's munitions list to the less-intimidating Commerce Department's Commerce Control List. It has also been a business-friendly administration (despite accusations to the contrary by certain political groups). It is hard to encourage an activity and simultaneously tamp down on it.

Granted, my reference point may be outdated. It takes a while for export penalty cases to wend through the administrative process and finally appear on the BIS's website. There may still be a spike around the enforcement corner. As a lawyer practicing in this area, I regularly help companies in with export emergencies. For companies not facing an emergency, I must assume that the zealousness of enforcement authorities is undiminished and I must remind my clients that the tools at the disposal of these authorities are to be respected, even feared. If this particularly formidable lion is taking a cat nap, I must make sure that it's not one my clients who steps on its tail.



Compliance Calendar

International Sales Contracts Webinar

December 5, 2013

11 am - 12 noon Central

[Registration: \\$99](#)

12 Compliance Days of Christmas Webinar

December 12, 2013

11 am - 12 noon Central

[Registration: \\$49](#)

All events that our law firm sponsors are free to clients (past, current, or future) and to students of the [Best Customs Exam Study Course](#).

C o p y r i g h t N o t i c e

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