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CBP Gets Its Comeuppance

by

Oscar Gonzalez, Attorney

The federal government often seems impervious to reason and devoid of any sense of fair play. When we know people that share these character traits, we can usually avoid them without too much effort. However, it is much more difficult to avoid the government given its omnipresent reach. It is equally difficult to hold the government accountable when it abuses its authority. Sovereign immunity, that antiquated "the king can do no wrong" legal doctrine that the American Revolution was supposed to have upended, somehow



continues to stand in the way of justice. Unless expressly allowed under statute, private citizens may not sue the government.

One such statute is the Equal Access to Justice Act or EAJA. An importer recently took advantage of the EAJA in *International Custom Products v. US*, an opinion from the US Court of International Trade.

CBP issued a ruling classifying the importer's merchandise. Six years later and without giving any notice to the importer, CBP abruptly changed its mind, blatantly ignored its own regulations and administrative procedures that it was required to follow before revoking a previous ruling, and issued a Notice of Action reclassifying the importer's merchandise under a tariff provision that increased the duty rate by 2400%. In siding with the importer, the court did not buy into CBP's claim that it was forced to take impetuous, reckless steps in order to catch the importer in fraudulent, or maybe even criminal, acts. Justice was done, right? Well, the winning party can only get attorneys fees and costs against the government, which the court dutifully awarded to the importer here. However, EAJA does not allow a party to collect actual damages against the government. As long as the king can do no wrong, perhaps Congress should remove the "J" from the EAJA.

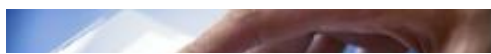




Did you know that Customs almost torpedoed **One Flew Over The Cuckoo's Nest**?

"Despite the middling success of the 1963 stage adaptation of Ken Kesey's novel starring Kirk Douglas, Hollywood legend Douglas was dead set on adapting the story for the screen. Douglas contacted Czech director Miloš Forman about the project, promising to send Forman a copy of the book for his perusal. Douglas mailed Forman the novel, but the package was confiscated by Czechoslovakian customs and never reached the director. Unaware of the parcel's fate, the filmmaker resented Douglas' broken promise, and Douglas thought Forman rude for never bothering to confirm receipt of the novel. It took a decade to sort the mess out, and things only cleared up when Kirk's son Michael Douglas took another crack at production and contacted Forman once more."

Excerpted from [15 Things You Might Not Know About 'One Flew Over the Cuckoo's Nest'](http://mentalfloss.com) (mentalfloss.com)



Customs Broker Exam



Customs Broker Exam Goes Electronic, Sort Of

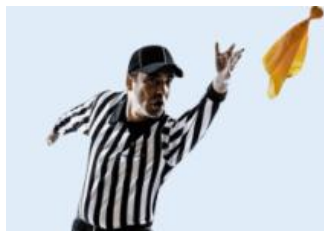
Scantrons are so yesterday, at least they shortly will be when it comes to taking the customs broker exam. CBP just announced that the April 2016 customs broker exam will be given electronically. CBP has not released the details of this tentative half-step into 21st Century technology, but apparently people taking the customs broker exam will no longer have to worry about bringing a fistful of No. 2 pencils and making sure to completely bubble in the correct answer. It is still not clear what kind of computer (tablet or other) will be used, but apparently people taking the exam will still be required to bring all the other implements that CBP has historically required, including hard copies of the back-breaking HTSUS and 19 CFR, plus maybe a calculator. CBP thinks the change will help it grade exams and report results more quickly, but CBP does not promise to make exam results available immediately. Why there would be any lag is a mystery, but at least CBP is consistent. It has always moved at a glacial pace, oblivious to the lives and futures of the people who wait on needles and pins to hear any word of their exam scores. Keep a look out for more information from us and from CBP. CBP is sure to flesh out its initiative soon, perhaps surprising everyone with even bolder changes.

If you are interested in becoming a broker, take **The Best Customs Broker Course**. It has a 90% pass rate and we guarantee that you will pass the exam.

DID YOU KNOW?

DID YOU KNOW?

19 CFR 141.86(a)(7) requires importer invoices to specify whether the currency is in gold, silver, or paper?



PENALTIES UPDATE

Department of Justice Threatens To Go Beast Mode On Corporate Violators

by
Oscar Gonzalez, Attorney

Few of us would pay even the slightest attention to compliance if not for the threat of penalty. The stiffer and more certain the penalty, the more likely that companies and individuals will toe the legal line. Federal enforcement agencies have long been accused of coddling corporate miscreants, the bigger and more influential the violator, the greater the coddling. Absent the threat of personal liability, whether civil or criminal, fines and penalties are considered as nothing more than the cost of doing business, a pittance compared to the certain financial rewards from noncompliance.

That security blanket is about to be ripped away if the US Department of Justice is to be believed. In an "enough with playing footsie with violators" memo that is shaking up corporate board rooms across the globe, Sally Quillian Yates, Deputy Attorney General, outlines a brash, six-pronged plan of attack that federal prosecutors will use against white collar corporate criminals: (1) if they want to hang on to any hope to be treated with leniency by enforcement authorities, companies who turn themselves in for violating a civil law can no longer keep any relevant information away from enforcement authorities; (2) enforcement officials will target individuals within a corporation first and from the start of an investigation. This doesn't mean that companies escape liability, but instead that the people who speak and act on behalf of the company will be held primarily accountable; (3) The DOJ's attorneys in the criminal and civil divisions will more closely work together and share information, thus widening and strengthening the legal net to catch violators; (4) Agreements reached with a company to settle a penalty will be less likely to include or benefit company officers and employees; (5) enforcement officials will do a better job of bringing penalties and charges before the statute of limitations expires; and (6) it will now be ok, perhaps encouraged, for the government to sue someone even when it appears that the person will not have enough money to pay the penalty.

If these enforcement initiatives from the biggest, baddest cops on earth do not intimidate you, here's hoping that your company's compliance programs are perfect or that you have sufficient reserves for legal fees when federal enforcement official discover they aren't.

- [click here to read the DOJ's memo](#) -

Two Individuals Agree to Pay \$435,000 to Settle False

Claims Act Suit For Evading Antidumping Duties

The Department of Justice announced that Robert Wingfield, of Texas, and Bill Ma, of New Jersey, agreed to pay \$385,000 and \$50,000, respectively, to resolve a lawsuit brought by the United States under the False Claims Act alleging that they engaged in a scheme to evade antidumping customs duties on imports of aluminum extrusions from the People's Republic of China (PRC). The allegations were originally brought by a whistleblower.

- [click here to see read the entire press release](#) -

Irish National Extradited to the United States from the United Kingdom for Trafficking of Rhinoceros Horns

Patrick Sheridan, an Irish national, who was arrested on Jan. 9, 2015, in the United Kingdom pursuant to a request by the United States, was extradited to the United States on Friday and appeared in federal court in Waco, Texas yesterday. The U.S. sought Sheridan's extradition for his role in trafficking black rhinoceros horns, announced Assistant Attorney General John C. Cruden for the Department of Justice's Environment and Natural Resources Division.

- [click here to see read the entire press release](#) -

Several People Fined \$7 Million For Illegal Exports To Syria

The Bureau of Industry and Security issued \$7 million in penalties against several individuals for illegally exporting web monitoring software and devices to Syria.

- [click here to see read the Federal Register Notice](#) -

Guatemala's President



removed from office and
jailed for customs fraud.



Customs duties shape our world. Countries try to calibrate duty rates to increase investment or to deter foreign competition. Transnational corporations capture domestic markets by dismantling customs duties or, just as likely, imposing huge taxes (antidumping duties) on foreign competitors who are accused of having an unfair advantage. Corruption is sure to follow when the stakes are so high. In our own country, companies and their officers can find themselves in trouble under the Foreign Corrupt Practices Act for bribing foreign customs officials. It seems that other countries are following our example, even Guatemala, one of the earth's poorest nations where oligarchs have for decades ruled the country with impunity and violence. Somehow against all odds and in the face of its devastating history, the country's majority poor recently removed and jailed not only their own president, Perez Molina, but also the Vice President and cabinet members. These officials are charged with skimming from the bribes that foreign companies pay customs officials. No one knows what the Guatemala courts, which are often shills for the ruling elite, will do with these cases, but it should hearten the honest manufacturer and exporter that transparency and the rule of law are gaining a foothold even in the most unlikely places.



This document adopts as a final rule, with changes, interim amendments to the CBP regulations pertaining to importations of merchandise bearing suspected counterfeit trademarks or trade names that are recorded with CBP. Specifically, the amendments allow CBP, for the purpose of obtaining assistance in determining whether merchandise bears a counterfeit mark, to disclose to a trademark or other mark owner information appearing on merchandise or its retail packaging that may otherwise be protected by the Trade Secrets Act. This final rule also amends the CBP regulations to further enhance information-sharing procedures by requiring CBP to release to the importer an unredacted sample or image of the suspect merchandise or its retail packaging any time after presentation of the suspect goods for examination. This change is to reflect that an importer may not have complete information about the marks appearing on imported goods, and release of such unredacted information will assist the importer in providing CBP with a meaningful response to a detention notice. The amendments also require CBP to release limited importation information to the mark owner no later than the time of issuance of the detention notice to the importer, rather than within 30 business days from the date of detention. Finally, these amendments require CBP to notify the mark owner that use of any information otherwise protected by the Trade Secrets Act that is disclosed by CBP to the mark owner is for the limited purpose of assisting CBP.

Federal Register Volume 80, Issue 181 (Sept. 18, 2015)



FREE Boot Camps During Exam Week in San Antonio, Texas

BEFORE THE EXAM

Oct 5 (Mon)



Last-Minute, All-Day Review

This one-day cram session will hone your exam-taking skills. Bring and share your study questions.

AFTER THE EXAM

Oct 8 (Thurs) & Oct 9 (Fri)



Find Out If You Passed

For two days immediately following the exam, work through your answers with the instructor and with other people who took the exam to determine your probable score.

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MADE SIMPLE WEBINARS

Our **TRADE COMPLIANCE MADE SIMPLE WEBINAR SERIES** covers the full spectrum of international trade compliance. Instructors are acclaimed legal experts with decades of experience of distilling the most essential lessons from complex laws and real-life situations.

**CBP FINES, PENALTIES, FORFEITURES,
& LIQUIDATED DAMAGES****Oct. 12 (Monday)**

Topics: How to avoid fines, penalties, forfeitures & liquidated damages and what to do if your company is targeted by Customs.

INTERNATIONAL SALES CONTRACTS**Oct. 23 (Friday)**

Topics: Contract Basics, UCC Article 2, United Nations Convention on Contracts for the International Sale of Goods, Due Diligence, Contract Enforcement

**FOCUSED ASSESSMENTS, IMPORTER
SELF-ASSESSMENTS, AND CUSTOMS AUDITS****Nov. 9 (Monday)**

Topics: How to prepare for and survive a CBP audit, benefits and qualifying for the Importer Self-Assessment Program, and auditing for compliance

EXPORT COMPLIANCE**Nov. 20 (Friday)**

Topics: Scope of Export Administration Regulations, Reexports, Classification, Licensing and Exceptions, Compliance Management, Recordkeeping, Sanctions, Routed Transactions, Penalties and Enforcement

FOREIGN CORRUPT PRACTICES ACT**Dec. 4 (Friday)**

Topics: History and How the FCPA works, Roles of SEC and Dept of Justice, Fines and Penalties, What Is Prohibited, Exceptions, Best Practices

12 COMPLIANCE DAYS OF CHRISTMAS**Dec. 17 (Thursday)**

Topics: 12 essential steps for improving, designing, and implementing a topnotch import and export compliance program. No previous knowledge of import or export compliance is required

Each webinar is one hour long and starts at 11 am Central Time.

REGISTRATION: \$49 per webinar. Attend all six seminars for \$150. Free admission to clients and to students of the Best Customs Broker Course.

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

Disclaimer

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