



SANDLER, TRAVIS & ROSENBERG, P.A.
International Trade, Customs & Export Law

What You Need to Know About Customs and Trade Laws and the Agencies That Enforce Them

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About Patrick D. Gill

Patrick D. Gill serves as Of Counsel to Sandler, Travis & Rosenberg, P.A., resident in New York. A seasoned litigator, Mr. Gill represents clients before courts and administrative agencies in matters pertaining to customs and international trade. Before joining ST&R he practiced with the Rode & Qualey law firm, and he began his legal career as a trial attorney in the customs section of the office of the assistant U.S. attorney general. Mr. Gill is a member of the bars of the state of New York, the U.S. Supreme Court, the District of Columbia, the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, the U.S. Court of Federal Claims, the U.S. Court of Appeals for the Second Circuit, and the U.S. district courts for the Southern and Eastern Districts of New York.



U.S. Customs and Border Protection

History

- One of the oldest agencies in the Federal Government. The second law passed by the First Congress – Tariff Act of July 4, 1789.
- Fifth Act of Congress established Customs and its ports of entry. For the next 125 years, Customs duties were virtually the sole source of revenue for the Federal Government.

U.S. Customs and Border Protection

History (Cont'd)

- Customs eventually evolved into the Bureau of Customs (renamed U.S. Customs Service) in the 20th Century with the first Commissioner appointed in 1927.
- Post-9/11, Customs moved from Department of Treasury to new Department of Homeland Security.

U.S. Customs and Border Protection

History (Cont'd)

- Customs Service renamed U.S. Customs and Border Protection (CBP) adding administrative functions performed by other agencies including Immigration, Agriculture, etc.
- Enforcement functions separated from the rest of the Customs function with the creation of a separate agency under Homeland Security – Immigration and Customs Enforcement (ICE).

U.S. Customs and Border Protection

History (Cont'd)

- Elements of the enforcement function now reside both in CBP and ICE.
- Principal agency involving imports, exports and importers is CBP.
- ICE is primarily involved in criminal law enforcement with respect to Customs and other areas such as immigration and interdiction.

Principal Functions of CBP

- Assessing and collecting Customs duties, excise taxes, fees and penalties due on imported merchandise.
- Interdicting and seizing contraband, including narcotics and illegal drugs.

Principal Functions of CBP (Cont'd)

- Processing persons, baggage, cargo and mail, and administering certain navigation laws.
- Detecting and apprehending those engaged in fraudulent practices designed to circumvent Customs and related laws.

Principal Functions of CBP (Cont'd)

- Protecting American business and labor and intellectual property rights by enforcing U.S. laws intended to prevent illegal trade practices, including provisions relating to quota and the marking of imported merchandise; the Antidumping Act and providing Customs recordations for copyrights, patents and trademarks

Principal Functions of CBP (Cont'd)

- Enforcement of import and export restrictions and prohibitions, including the export of critical technology used to develop weapons of mass destruction, and money laundering.
- Collecting accurate import and export data for compilation of International Trade statistics.

Principal Functions of CBP (Cont'd)

- In addition to the enforcement of Customs laws, CBP enforces well over 400 other provisions of law for at least 40 agencies, including laws administered by the FDA.

Other Agencies Involved in Customs Administration and Enforcement

- Commerce Department.
 - Census—Import and Export Statistics.
 - Bureau of Industry & Security
 - High Tech Exports
 - Export to Forbidden Countries or Parties

Other Agencies (Cont'd)

- International Trade Administration
 - Office of AD/CVD Operations
 - Antidumping
 - Countervailing Duties
 - US Customs and Border Protection Unit

Other Agencies (Cont'd)

International Trade Commission

- Makes injury determinations in antidumping and countervailing duty cases.
- Investigates injury questions in other areas involving relief from Unfair Trade Practices. Responsible for administration of the statistical section of the Harmonized Tariff Schedule.

Other Agencies (Cont'd)

International Trade Commission

- Investigates patent infringement cases on imported products (§ 337 Actions.)

Other Agencies (Cont'd)

U.S. Trade Representative (USTR)

- Represents US Government in trade matters.
- Part of Executive Office of the President and works closely with the Department of State.

Structure of Customs

- CBP HQ
- Commissioner's Office
 - Director of Trade Relations

Structure of Customs (Cont'd)

- Office of Chief Counsel
 - Primarily involved with defense of the agency—limited interaction with importers.

Structure of Customs (Cont'd)

- Assistant Chief Counsel, International Trade Litigation Staff.
- Associate Chief Counsel offices in regions.
 - Represents US Government in trade matters.
 - Secondary role in settlement of penalty cases and liquidated damages claims.

Structure of Customs (Cont'd)

- Office of Regulations and Rulings –
Assistant Commissioner
 - Principal office involved with administration of regulations and rulings issued by CBP.

Structure of Customs (Cont'd)

- Commercial and Trade Facilitation Division.
 - Staffed by attorney-advisors who are the primary authors of precedential Customs rulings.

Structure of Customs (Cont'd)

- National Commodity Specialist Division
- (New York)
 - Primary office which issues binding 30-day rulings.

Structure of Customs (Cont'd)

- Penalty Branch
 - Review of decisions by local penalty offices
 - Issuance of rulings in Penalty cases
 - Drafts and interprets regulations and directive on penalty matters

Structure of Customs (Cont'd)

- Office of Field Operations
 - Strategic Operations Division.
 - CTPAT Security
 - CTPAT Trade Compliance (formerly ISA)

Structure of Customs (Cont'd)

- CBP Field Offices
 - Import Specialists at port of entry
 - Primary Customs officer interacting with importers.
 - Responsible for review of entries, classification, valuation, marking, quotas, etc.

Structure of Customs (Cont'd)

- Import Specialists issue Requests for Information (CF 28's) and Notices of Action (C.F. 29's).
- Import Specialists are primary officers responsible for acting on Post Summary Corrections (PSC's) by which routine Customs errors are brought to the attention of Customs and corrected without further action or penalty.

Structure of Customs (Cont'd)

- Import Specialists are primary advisors to enforcement arm of CBP on questions involving classification, valuation, marking, etc.

CBP Centers of Excellence and Expertise

- Currently CBP has ten (10) Centers of Excellence and Expertise (CEE's) in strategic locations throughout the United States which focus on CBP trade expertise on industry-specific issues. Main purpose is to avoid conflicting treatment at individual ports of entry on important industry sectors.

CBP Centers of Excellence and Expertise (Cont'd)

- Ports of entry continue to exist as always and the CEE's are operating on a voluntary basis where importers can seek to have their products processed through the Centers.

CBP Centers of Excellence and Expertise (Cont'd)

- The Centers and their locations are as follows:
 - - Agriculture and Prepared Products, Miami, Florida;
 - - Apparel, Footwear and Textiles, San Francisco, California;
 - - Automotive and Aerospace, Detroit, Michigan;
 - - Base Metals, Chicago, Illinois;

CBP Centers of Excellence and Expertise (Cont'd)

- Consumer Products and Mass Merchandising, Atlanta, Georgia;
- Electronics, Long Beach, California;
- Industrial and Manufacturing Materials, Buffalo, New York;
- Machinery, Laredo, Texas;

CBP Centers of Excellence and Expertise (Cont'd)

- Petroleum, Natural Gas and Minerals,
Houston, Texas
- Pharmaceuticals, Health and Chemicals, New York City, NY

Structure of Customs (Cont'd)

National Account Manager

- Responsible for ensuring uniform treatment by ports located throughout the United States.

Structure of Customs (Cont'd)

- Responsible to assist and work on Customs Compliance issues.
- Important source of advice on problems involving Customs administration.
- Advocate for the importer within the CBP.

Structure of Customs (Cont'd)

Import Specialist Enforcement Teams (ISET)

- Responsible for reviewing possible violations and recommending further enforcement action by CBP.
- Vehicle for sifting out possible penalty cases.

Structure of Customs (Cont'd)

Fines, Penalties, Penalties and Forfeitures Office

- Primary office for initiation, review, and settlement of penalty cases.
- Judge, jury and executioner.
- Initiates penalty actions under 19 U.S.C. § 1592—the primary civil fraud statute administered by Customs.

Structure of Customs (Cont'd)

- Reviews petitions for relief from and/or mitigation of penalties.
- Decisions subject to review upon appeal to Penalty Office at CBP HQ which is part of Office of Regulations and Rulings.
- Issues liquidated damages claims.
- Reviews liquidated damages petitions.

Structure of Customs (Cont'd)

- Interacts with other agencies, such as FDA, with respect to the issuance and mitigation of claims for liquidated damages.
- Reviews all prior disclosures made under 19 U.S.C. § 1592.

Structure of Customs (Cont'd)

Regulatory Audit Division

- Reports directly to Regulatory Audit Division at CBP HQ.
- Conduct Customs Focused Assessments (audits).

Structure of Customs (Cont'd)

Customs Officers

- Uniformed officers who examine cargo and passengers.
- Report their findings on cargo inspection to Import Specialists and Enforcement Officers.
- First-line officers responsible for detention and seizure of merchandise.

Structure of Customs (Cont'd)

Customs Agents

- Not part of CBP—spun off to ICE.
- Law Enforcement Officers in every sense of the word.
- Any contact with a Customs agent should be treated with the utmost seriousness.

Structure of Customs (Cont'd)

- Inquiries from Customs agents should immediately be referred to counsel.
- Have authority to issue administrative summonses and subpoenas.
- Primarily involved with investigation of criminal and civil penalty cases.
- Agents work with U.S. attorney's office in prosecution of criminal matters.

Questions?



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