

CBP Trade Enforcement Bulletin



U.S. Customs and
Border Protection



Quarter 4

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Trade Agreements

Operation Special K

The Agreement on Trade in Pharmaceutical Products provides for duty-free treatment of certain chemicals listed in appendices to the Harmonized Tariff Schedule. The Special Program Indicator (SPI) “K” is used to claim that merchandise qualifies for the Agreement on Trade in Pharmaceutical Products—a preference program negotiated through the World Trade Organization in which major pharmaceutical-producing nations agreed to reciprocal tariff elimination for pharmaceutical products and for chemical intermediates used in the production of pharmaceuticals.

Understanding the application of SPI-K can be complex. Three tables lay out the chemicals qualifying for duty-free import, and must be used in conjunction with one another. Both importers and import specialists must carefully consider the chemical composition of a product to determine if SPI-K might apply.

Now that the Pharmaceuticals, Health, and Chemicals Center of Excellence and Expertise (PHC Center) is fully staffed, the import specialist teams have been able to focus on this nuanced aspect of trade law. In Fiscal Year 2016 to date, the PHC Center has recovered over \$300,000 as a result of entry reviews with incorrect SPI-K claims.

Intellectual Property Rights (IPR)

Industry Collaboration Drives Success in Automotive Industry

In partnership with Original Equipment Manufacturers (OEMs), the National Intellectual Property Rights Center, Homeland Security Investigations (HSI), the non-profit National Cyber-Forensics & Training Alliance (NCFTA), and other law enforcement agencies, the Automotive & Aerospace Center (A&A) collaborates with stakeholders in the automotive industry to combat counterfeit automotive parts and high-risk non-genuine parts. This continued collaboration falls under HSI Operation Engine Newtity, an initiative to bear all elements of federal law enforcement to counter this threat by educating industry stakeholders and the public, interdicting the counterfeit goods at the ports of entry, and investigating and prosecuting individuals who traffic these goods for monetary gain.

A key element of Operation Engine Newtity is strong and continued engagement with the industry. OEMs and HSI share trade intelligence with the A&A Center through regularly scheduled conference calls and frequent communication. The OEM participants share resulting seizure notices received and work together to develop an industry wide view of the counterfeit problems facing their industry. This partnership is critical to success since trade expertise regarding the products and possible risks is found within the private industry.

The A&A Center aggressively targets shipments of suspected counterfeit products. Shipments are targeted in support of ongoing criminal investigations, and also to confirm reasonable suspicion of violations. It similarly intercepts potentially unsafe automotive goods without regard to trademark violations. For example, the A&A Center assisted the ports of Detroit and Buffalo with the entry refusal of 92 salvaged airbags that did not meet the U.S. Department of Transportation (DOT) requirements for transporting hazardous materials. In another instance, a shipment of counterfeit vehicle grilles included 210 aftermarket automotive headlamps that do not meet DOT safety standards. The A&A Center looks to continue and strengthen the partnership, especially in light of its success.

Intellectual Property Rights (IPR) (cont.)

Constructive Seizure of Wakeboard Boots

On May 20, 2016, a container of wakeboard boots arrived and was examined at the port of Jacksonville, Florida, by CBP personnel. An examination of the commodity revealed that these wakeboard boots were possibly bearing counterfeit logo tags attached to the boot straps. The trademark representative of the brand in question determined that it was not their product. Further proof was sought by contacting the headquarters of the IPR Branch to determine if it was genuine material. The headquarters responded, stating that the brand owner company



Wakeboard Boots



Wakeboard Boots

had already determined the logos were not genuine, and the use of the brand name would represent a spurious or counterfeit use of the mark. The violative goods were seized, subject to 19 USC 1526(e), as implemented by 19 CFR 133.21 under “constructive seizure.”

There were a total of 842 pairs of wakeboarding bindings (boots), packed in 182 cartons. The total appraised value of the seized items was estimated to have a domestic value of \$195,908 and a Manufacturer’s Suggested Retail Price of \$269,432.

Shipment of Counterfeit Shirts Stopped at Port of Alexandria Bay Border Crossing

U.S. Customs and Border Protection Office of Field Operations at the Port of Alexandria Bay seized over 1,700 counterfeit shirts, valued at more than \$66,000, in April 2016.

“Our officers and import specialists did an excellent job targeting this shipment and identifying the counterfeit items,” said the Alexandria Port Director. “CBP protects businesses and consumers every day with an aggressive intellectual property rights enforcement program.”

Officers selected a shipment for secondary examination where they discovered over 1,700 shirts bearing the logos of two well-known companies. Both companies’ logos are registered and recorded trademarks. Further examination revealed that the shirts were counterfeit.



Officers with Seized Merchandise

In February 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which highlighted Intellectual Property Rights (IPR) as a Priority Trade Issue.

Products that infringe on U.S. trademarks, copyrights, and patents threaten the health and safety of American consumers, the economy, and national security. CBP and U.S. Immigration and Customs Enforcement’s Homeland Security Investigations continue IPR enforcement against illicit imports.

Antidumping and Countervailing Duties (AD/CVD)

Operation Totally Floored (Again)

The Industrial and Manufacturing Materials Center of Excellence and Expertise (IMM Center), based out of Buffalo, New York, recently reported the final results of their national revenue based operation Totally Floored (Again).

The operation was conducted in Fiscal Year 2016. The Antidumping and Countervailing Duty (AD/CVD) National Targeting and Analysis Group (NTAG) targeted Entry Summaries of multilayered wood flooring from China that had a high probability of being discrepant for AD/CVD evasion. Several of the targeted entries had possible misclassifications as well.

The antidumping deposit rates for the cases of this type are as high as 58.84%. The associated countervailing duties case has rates as high as 85.57%, depending on the manufacturer/exporter combination. Therefore, there is great incentive for importers to evade the payment of AD/CVD on multilayered wood flooring from China.

In total, IMM Center import specialists reviewed 106 entry summaries at 14 ports of entry, resulting in 101 discrepancies (95% discrepancy rate). This led to the identification of \$858,650 in potential lost revenue. This has a huge impact on domestic industry. AD/CVD collection helps to save jobs for American workers and keep domestic industry alive.

Despite the operation officially ending, the IMM Center continues to seek additional revenue. The IMM Center continues to review the results of additional entries discovered while expanding the universe. 19 USC 1592 penalties have also been discussed for several companies, which could further expand the revenue collections and hopefully create future compliance in the industry.

This operation was highly successful due to the IMM Center's collaborative efforts with the AD/CVD NTAG. Having the Office of Field Operations work closely with the Office of Trade has proven time and again to yield excellent results. This is just one example of many where CBP was able to take the expertise from both divisions to create a very successful operation. We are one step closer to compliance in the multilayered wood flooring industry.

California-Based Z Gallerie, LLC, Agrees to Pay \$15 Million to Settle False Claims Act for Allegedly Evading Antidumping Duties

The Department of Justice announced that Z Gallerie, LLC, has agreed to pay \$15 million to resolve allegations that the company engaged in a scheme to evade antidumping duties on imports of wooden bedroom furniture from the People's Republic of China (PRC) in violation of the False Claims Act.

It is alleged that the company evaded antidumping duties on wooden bedroom furniture imported from the PRC from 2007 to 2014 by misclassifying, or conspiring with others to misclassify, the imported furniture as pieces intended for non-bedroom use. CBP personnel at the Port of Savannah, Georgia worked on the case for several years with Department of Justice Civil Division's Commercial Litigation Branch, the U.S. Attorney's Office for the Southern District of Georgia, and Homeland Security Investigations.

"Under the new Trade Facilitation and Trade Enforcement Act, CBP will likely see an increase in these types of settlements as the streamlined processes take effect concerning allegations of duty evasion," said CBP Commissioner R. Gil Kerlikowske. "The Act reinforces CBP's existing authorities and tools to collect and investigate public allegations of duty evasion improving the overall effectiveness and enforcement of CBP law enforcement actions concerning illicit trade activity, specifically in the area of antidumping and countervailing duty evasion schemes."

Revenue

CBP Inquiry Results in Prior Disclosure Submission



Starch Noodle

It has been CBP's longstanding practice to classify bean thread, and other starch-based noodles, under the Harmonized Tariff Schedule of the United States (HTSUS) provision 1901.90.9095, with a 6.4% duty rate. The Agriculture and Prepared Products Center of Excellence and Expertise (APP-CEE) discovered that a company had entered starch noodles, "vermicelli" as flour-type noodles classified under 1902.19.2090, with no duty rate. The APP-CEE retrieved all unliquidated entries and determined that they also contained incorrectly classified starch noodles. The APP-CEE "expanded the universe" further and discovered that the company had used the 1902.19.2090 classification on several entries over the past 5 years. A CBP Form 28 was issued to request information on the past liquidated entries. The company then sought counsel and argued that they should not be held liable for liquidated entries. During the discussions, the company understood that due to their "failure to use reasonable care", they exposed themselves to negligence as outlined under 19 USC 1592. After a thorough review of their entries, the company submitted a prior disclosure and tendered a total of approximately \$150,000, which included the rate advanced entries.

Trade Enforcement Highlights

Forced Labor

Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced labor – including forced child labor. Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s).

You can help – CBP regulations state that *any* person who has reason to believe that merchandise produced by forced labor is being, or is likely to be, imported into the United States may communicate his belief to any Port Director or the Commissioner of CBP (19 C.F.R. § 12.42). This may be accomplished by submitting detailed information to CBP which satisfies the requirements of 19 C.F.R. § 12.42(b).

Fact Sheets and more information can be found at <https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>.

Enforce and Protect Act (EAPA)

Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act of 2015 or EAPA, establishes formal procedures for submitting and investigating antidumping or countervailing allegations of evasion against U.S. importers. CBP is responsible for tracking and reporting allegations of evasion from initial receipt, vetting and enforcement actions, to final disposition of an investigation. The EAPA provides interested parties, including domestic companies and workers, with greater transparency into CBP's efforts to address AD/CVD evasion.

The Act establishes the following deadlines and a formal process that CBP must follow during the conduct of its investigations:

- ◆ After receiving a proper allegation from an interested party or a request from another agency, CBP initiates an investigation.
- ◆ If CBP is unable to determine whether the merchandise at issue is subject to an AD or CVD order, CBP shall refer the matter to the U.S. Department of Commerce.
- ◆ Within 300 days after initiation, CBP shall make a determination with respect to whether the merchandise at issue was entered by means of evasion. CBP may, however, extend this deadline if it determines that it is an extraordinarily complicated case.
- ◆ A final determination in an EAPA investigation may be subject to both an administrative appeal and judicial review by the Court of International Trade.

More information can be found at <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>. For further information, please email questions to cpallegations@cbp.dhs.gov.