

**Customs Directive No.** 2310-006A  
**Date:** December 16, 1999  
**Originating Office:** OR&R  
**Supersedes:** 2310-006 Nov 21, 1989  
**Review Date:** December 2001

## **EXCLUSION ORDERS**

- 1. PURPOSE.** To present information on Customs policies and procedures concerning Exclusion Orders issued by the International Trade Commission.
- 2. AUTHORITY.** Title 19, United States Code, Section 1337; 19 CFR § 12.39.
- 3. BACKGROUND.** Under Section 337 of the Tariff Act of 1930 (19 USC § 1337), unfair methods of competition and unfair practices in the importation or sale of articles, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated U.S. industry, or to restrain or monopolize trade and commerce in the United States, are unlawful. Additionally, Section 337 declares unlawful the importation into the United States of articles which infringe a U.S. patent, registered trademark, copyright, or mask work. Subsequent to an investigation of an alleged violation under Section 337, where the U.S. International Trade Commission (ITC) determines that Section 337 has been violated, the Commission may issue orders directing the Secretary of the Treasury to exclude the subject goods from entry into the United States.
  - 3.1** Under Section 337 of the Tariff Act of 1930, as amended, unfair methods of competition and unfair practices in the importation or sale of articles, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated U.S. industry, or to restrain or monopolize trade and commerce in the United States, are unlawful.
  - 3.2** Exclusion Orders issued by the ITC are sent to the President for review. During the 60 day review period, if the order is not disapproved by the President or if the President affirmatively approves the order during this period, the order becomes final. Customs enforces Exclusion Orders both prior and subsequent to their becoming final. In cases involving importations which occur within the 60 day Presidential review period, the otherwise excludable articles may be entered under a single entry bond on Customs Form 301, containing the bond conditions set forth in 19 CFR § 113.62 in an amount determined by the ITC. After the Presidential review period, where the Exclusion Order becomes final, the bond conditions no longer apply and the goods are subject to exclusion.

**3.3** Exclusion Orders may be either “General” (meaning all goods of a certain description must be denied entry, with specified exceptions) or “Limited” (meaning all goods of a certain description imported by a certain company or companies must be denied entry). Limited exclusion orders are sometimes directed against goods manufactured by or exported by a certain company or companies. The nature of the Exclusion Order itself, and the parameters of enforcement, will be detailed in the Exclusion Order Notice.

**3.4 Seizure and Forfeiture Orders.** In addition to issuing Exclusion Orders, the ITC may also issue Seizure and Forfeiture Orders where the importer attempts, after previously having had the same goods denied entry pursuant to an Exclusion Order, and having been notified by Customs that seizure and forfeiture could result from future attempted entries, a subsequent importation of similar goods which are the subject of the Exclusion Order. Importations of articles in contravention of Seizure and Forfeiture Orders should be seized and forfeited under 19 U.S.C. §1337(i), as implemented by 19 CFR §12.39(c).

**4. ENFORCEMENT.** In general, Exclusion Orders issued by the ITC are administered by the Office of Regulations & Rulings, IPR Branch, but are processed by the Office of Field Operations. Upon receipt of orders from the ITC, an “Exclusion Order Notice” is released to the field through the Office of Field Operations. Notices regarding the enforcement of exclusion orders are to be transmitted to the field via the U.S. Customs Bulletin Board (Trade Enforcement, OTO1). Exclusion Order Notices will provide details relative to the enforcement of a particular order. Exclusion Orders are catalogued within the ACS/IPR module in the same manner as trademarks and copyrights.

**4.1 Procedures.** The strategic operational analysis staff (SOAS) will update cargo and/or summary selectivity criteria to include exclusion order information.

**4.1.1** Given the highly technical nature of articles which are the subject of most Exclusion Orders, Customs officers should seek the advice of Customs laboratories, which provide technical assistance in determining whether goods meet the parameters of the subject patent. Field officers may contact the designated field laboratory servicing their geographic area or the Laboratories and Scientific Services at Customs Headquarters for advice.

**4.1.2** Where goods determined to be subject to an Exclusion Order are presented to Customs, field officers must exclude the goods from entry into the United States and permit export. Note that “in bond” movements of restricted merchandise subject to an Exclusion Order, although transported through the United States, do not enter the United States and are thereby considered excluded from the United States.

**4.1.3** Written notification of such exclusion must be provided to the importer. A sample letter to be issued to the importer in such a case is attached to this Directive.

**4.1.4** Copies of denial of entry letters sent pursuant to Exclusion Orders are to be sent by the Port to:

**4.1.4.1** U.S. Customs Service, Office of Regulations & Rulings, IPR Branch, Room 3.4A, 1300 Pennsylvania Ave., NW., Washington, D.C. 20229

**4.1.4.2** U.S. International Trade Commission, Office of General Counsel  
500 E Street, SW., Washington, D.C. 20436

**5. RESPONSIBILITIES.** Customs field officers are responsible for following this Directive. Area/Port Directors, Assistant Port Directors (Trade Operations), supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

**Signed**

Commissioner of Customs

Attachment

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE

(IMPORTER)

Sir/Madam:

This is to advise you that the following shipment is deemed excludable from entry into the United States by Order of the U.S. International Trade Commission for violation of 337-TA- \_\_\_\_, an Exclusion Order:

Patent/Trademark/Copyright Registration Number:  
U.S. International Trade Commission Case No: 337-TA-  
Article Denied Entry:  
Quantity:  
Vessel/Airline:  
Bill of Lading:  
Date of Denial of Entry:

You have 30 days from the date of this letter to export the subject merchandise from the United States. If the merchandise is not exported within 30 days, it will be disposed of under Customs supervision pursuant to 19 CFR § 12.39(b)(3) and (c)(5).

A copy of this notice is being furnished to the U.S. International Trade Commission. You are hereby notified that any future attempt to import such articles may result in the articles being seized and forfeited.

Sincerely,

Area/Port Director

cc: U.S. International Trade Commission  
U.S. Customs, Office of Regulations & Rulings