What Every Member of the Trade Community Should Know About:

Instruments of International Traffic

U.S. CUSTOMS and BORDER PROTECTION

AN INFORMED COMPLIANCE PUBLICATION

AUGUST 2012

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the Border Security and Trade Compliance Division of Regulations and Rulings is entitled "What Every Member of the Trade Community Should Know About: Instruments of International Traffic”. It provides guidance regarding the treatment of articles, vehicles, locomotives, and railroad equipment used to transport merchandise as instruments of international traffic. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to U.S. Customs and Border Protection, Office of International Trade, Executive Director, Regulations and Rulings, 799 9th Street N.W. 7th floor, Washington, D.C. 20229-1177.

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INTRODUCTION

The purpose of this Informed Compliance Publication (ICP) is to identify U.S. Customs and Border Protection (CBP) laws and regulations pertaining to the designation and treatment of articles as instruments of international traffic.

As a general rule, all merchandise imported into the United States is required to be entered unless specifically excepted. The CBP regulations except certain instruments of international traffic and certain vehicles, locomotives, and freight cars from entry. In addition, duties and the liability for payment accrue upon arrival of imported and reimported merchandise.[1]

Specifically, in this publication, CBP will summarize:

- INSTRUMENTS OF INTERNATIONAL TRAFFIC
- EXCEPTIONS
- APPLICABLE CBP REGULATIONS

Background

Pursuant to 19 U.S.C. § 1322(a), certain vehicles and instruments of international traffic are excepted from the customs laws. This allows importers to admit vehicles, containers, and other holders used to transport merchandise and in certain circumstances passengers, into the U.S. without entry and the payment of duty. The CBP regulations promulgated pursuant to 19 U.S.C. § 1322(a) are found at 19 C.F.R. §§ 10.41, 10.41a, and Part 123, Subpart B.[2] The foregoing regulatory provisions set forth the criteria for instruments of international traffic and their permissible uses.

APPLICABLE CBP REGULATIONS

Instruments of International Traffic- 19 C.F.R. §§ 10.41, 10.41a, Part 123, Subpart B

The applicable CBP regulations governing instruments of international traffic are found in 19 C.F.R. §§ 10.41, 10.41a, and Part 123, Subpart B. With certain exceptions, instruments of international traffic may be released without entry or the payment of duty, subject to the provisions set forth in these regulations.

[1] See 19 U.S.C. § 1484 and See 19 C.F.R. §§ 141.1, 141.4(a)(3) and (4).
[2] Likewise, substantial containers and holders that are instruments of international traffic may be eligible for duty-free treatment under subheading 9803.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Coastwise Transportation of Merchandise—19 C.F.R. § 4.80b

Under 19 C.F.R. § 4.80b, "[a] coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise." For example, a coastwise transportation occurs when merchandise is loaded onto a vessel in San Francisco and carried to Seattle, where it is unloaded.[3]

Coastwise Transportation by Certain Vessels of Empty Instruments of International Traffic—19 C.F.R. § 4.93

CBP regulations allow U.S. vessels that do not have a coastwise endorsement, as well as foreign-flag vessels of nations that grant reciprocal privileges to vessels of the U.S., to transport certain articles between points embraced within the coastwise laws of the United States. These items include empty cargo vans, empty lift vans, and empty shipping tanks and the equipment for use with said empty cargo vans, lift vans and shipping tanks; empty barges specifically designed to be carried aboard a vessel and equipment (excluding propulsion equipment) for use with such barges; and empty instruments of international traffic. These items are exempt from the application of CBP regulations concerning the coastwise laws, if they are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling the cargo in foreign trade. The list of nations that extend reciprocal privileges to U.S. vessels is set forth at 19 C.F.R. § 4.93(b).

Bond Requirements—19 C.F.R. §§ 10.41a(c), 113.66, 113.62, 113.64

Merchandise shall not be released from customs custody at the time CBP receives the entry documentation unless a single entry or continuous bond on a CBP Form 301 has been filed.[4] Pursuant to 19 C.F.R. § 113.66, the bond for instruments of international traffic shall be a continuous bond and contain the bond conditions set forth in that section which include agreements to enter any diverted instrument of international traffic; to comply with the provisions of subheading 9803.50.50, HTSUS; and to comply with 19 C.F.R. § 10.41b(b) if applicable.

Railway locomotives and freight cars excepted from entry and released pursuant to 19 C.F.R. § 141.4(b)(4), must file a bond on a CBP Form 301 containing the bond conditions set forth in either 19 C.F.R. § 113.62 or § 113.64. See 19 C.F.R. § 141.4(d).

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[3] For more general information relating to coastwise transportation of merchandise see CBP's informed compliance publication What Every Member of the Trade Community Should Know About: Coast wise Trade: Merchandise (Jan. 2009).

[4] See 19 C.F.R. § 10.41a(c). For more general information relating to bonds see also CBP's informed compliance publication What Every Member of the Trade Community Should Know About: Entry (March 2004).

Liability of Importer for Duties—19 C.F.R. § 141.1

Under CBP regulations, duties and liability for their payment accrue upon imported merchandise on arrival of the importing vessel within a Customs Port with the intent to unlade, or at the time of arrival within the Customs territory of the U.S. if the merchandise arrives other than by vessel, unless otherwise excepted by law.

Entry Required—19 C.F.R. § 141.4

As a general rule, all merchandise imported into the United States is required to be entered, unless specifically excepted. Importation occurs when a vessel or aircraft laden with goods arrives within a port of entry with the intent to discharge its cargo, or upon arrival within the Customs territory of the United States if by vehicle or train. The "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico.

Specific exemptions from entry apply to merchandise described in General Note 3(e) of the Harmonized Tariff Schedule of the United States (HTSUS), to certain vessels, to instruments of international traffic, and to certain railway locomotives and cars from Canada and Mexico. The General Note 3(e) exemptions include corpses and accompanying coffins and flowers; telecommunications transmissions; business records and data; articles returned from space; undeliverable articles returned within 45 days and which have remained in the custody of the carrier or foreign customs service; and aircraft parts or equipment removed from U.S. registered aircraft in international traffic because of accident, breakdown or emergency and returned within 45 days of removal. [5]

INSTRUMENTS OF INTERNATIONAL TRAFFIC

Since formal entry and payment of duty are not required for instruments of international traffic, importers may benefit from having articles which they use for shipping merchandise designated as instruments of international traffic or by using their vehicles, locomotives, or railroad equipment in a manner that would permit such modes of transportation the advantages of instruments of international traffic. This would allow importers more efficient and economic use of their containers, vehicles, locomotives and other railroad equipment in local traffic as well as in foreign countries. The first part of this Informed Compliance Publication addresses how CBP determines that containers and holders used to ship merchandise are instruments of international traffic and how they must be used while they are in the U.S. The second part addresses how foreign and domestic vehicles, locomotives and their equipment must be used in international and local traffic in order to receive the benefit of being an instrument of international traffic.

[5] For more general information relating to entry see CBP's informed compliance publication What Every Member of the Trade Community Should Know About: Entry (March 2004).

ARTICLES USED FOR THE SHIPMENT OF MERCHANDISE AS INSTRUMENTS OF INTERNATIONAL TRAFFIC

Criteria for Determining Whether an Article is an Instrument of International Traffic

What constitutes an instrument of international traffic is set forth in the CBP regulations at 19 C.F.R. § 10.41a and in the Customs Convention on Containers.[6] The Secretary of Homeland Security is also authorized to designate articles as instruments of international traffic. In addition, CBP issues interpretive rulings relating to articles used as instruments of international traffic.

CBP Regulations

"Lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics, arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic" have been designated by regulation as "instruments of international traffic" within the meaning of 19 U.S.C. § 1322(a).[7]

Decision of the Secretary of Homeland Security

The Secretary of Homeland Security is authorized by regulation to designate articles or classes of articles as "instruments of international traffic" by decisions published in the Customs Bulletin.[8]

Customs Convention on Containers

The normal accessories and equipment imported with a "container" as defined by Article 1 of the Customs Convention on Containers and implemented by 19 C.F.R. § 10.41a(a)(3), are instruments of international traffic. Pursuant to Article 1 of the Customs Convention on Containers a "container" is defined as an:

> . . . article of transport equipment (lift-van, movable tank or other similar structure) :
>
> (i) fully or partially enclosed to constitute a compartment intended for containing goods;
> (ii) of a permanent character and accordingly strong enough to be suitable for repeated use;
> (iii) specifically designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;

[6] See Customs Convention on Containers, 1972.
[7] See 19 C.F.R. § 10.41a(a)(1).
[8] See id.

> (iv) designed for ready handling, particularly when being transferred from one mode of transport to another;
> (v) designed to be easy to fill and to empty; and
> (vi) having an internal volume of one cubic metre or more;
>
> the term "container" shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. The term "container" shall not include vehicles, accessories or spare parts of vehicles, or packaging. Demountable bodies are to be treated as containers . . .

Customs Convention on Containers, 1972, Ch. 1, Art. 1(c), et seq.

CBP Interpretive Rulings

If an article does not appear in 19 C.F.R. § 10.41a(a), has not been designated as an instrument of international traffic by the Secretary of Homeland Security, nor is the normal equipment of, or accessory to, a "container" as defined by the Customs Convention on Containers, in order to receive treatment as an instrument of international traffic, CBP requires that a container or holder must be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic.[9] An importer may request a prospective interpretive ruling[10] to determine whether the proposed use of an article meets the criteria of an instrument of international traffic.

1. Substantial Container or Holder
Polypropylene bags, plastic bread trays, plastic milk crates, general merchandise totes, and collapsible steel racks are some examples of instruments that CBP has determined are substantial holders or containers.[11]

2. Suitable For and Capable of Repeated Use
CBP has held that "reuse" means using containers more than twice.[12]

3. Used in Significant Numbers in International Traffic
CBP has held that 22 piston ram pans used annually was not a use of an instrument in a significant number so as to designate the pans as instruments of international traffic.[13]

[9] See HQ H016491 (Oct. 1, 2007); HQ 114150 (Dec. 12, 1997); HQ 107545 (May 7, 1985); Treas. Dec. 71-159, Cust. B. & Dec. 296 (June 18, 1971); 99 Treas. Dec. 533, No. 56247 (Aug. 26, 1964).
[10] See 19 C.F.R. § 177.
[11] See HQ 115816 (Dec. 2, 2002), HQ H119060 (Nov. 9, 2010), and HQ H022952 (Apr. 3, 2008), respectively.
[12] See HQ 112627 (May 18, 1993) and HQ 111073 (Aug. 16, 1990).

Entry and Payment of Duty Requirements for Instruments of International Traffic

Generally, an article that is: (1) specified in 19 C.F.R. § 10.41a(a) as an instrument of international traffic, (2) has been designated by the Secretary of Homeland Security as an instrument of international traffic, or (3) is the normal equipment of or accessory to, a "container" as defined by the Customs Convention on Containers, may be released[14] without entry or payment of duty[15] once a Customs bond has been filed.[16] However, exceptions to entry and duty exemptions for instruments of international traffic do exist.

EXCEPTIONS

1. Instruments of International Traffic Diverted to Point-to-Point Traffic in the U.S. or Withdrawn in the U.S. from Use as an Instrument of International Traffic

Instruments of international traffic of foreign origin or of United States origin which have increased in value or improved in condition by a process of manufacture or other means while abroad which have been released and subsequently diverted to point-to-point traffic in the U.S. or withdrawn from use as an instrument of international traffic in the U.S. are subject to entry and payment of duty.[17]

Point-to-Point Local Traffic

Instruments of international traffic, *other than Article 1 containers*, may be used in point-to point traffic if such traffic is incidental to the efficient and economical utilization of the instrument of international traffic. The following are uses that do not constitute a diversion to unpermitted point-to-point local traffic within the U.S. or a withdrawal of an instrument in the U.S. from international traffic:

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[13] See HQ 113041 (June 1, 1994); see also HQ 114843 and 114844 (Nov. 18, 1999) (single use of transportation container).
[14] See 19 C.F.R. § 10.41a(c)(stating that an instrument of international traffic may be released only if the applicant for such release has filed a Customs bond containing the bond conditions set forth in 19 C.F.R. § 133.66).
[15] See 19 C.F.R. § 10.41a(a)(1) and (3); see also subheading 9803.50.00, HTSUS (2012).
[16] In addition to the bond requirement set forth above, empty instruments of international traffic, must be manifested pursuant to 19 U.S.C. § 1431.
[17] See 19 C.F.R. § 10.41a(d).

Picking up and delivering loads at intervening points in the United States while en route:[18]

1. between the port of arrival and the point of destination of its imported cargo; or

2. from the point of destination of imported cargo to a point where the export cargo is to be loaded or to an exterior port of departure by reasonably direct route to, or nearer to, the place of such loading or departure.

Sale of an Instrument of International Traffic

The sale of an instrument of international traffic in the United States does not constitute a diversion from use in international traffic if the containers remain in international traffic with only a change in title.[19]

Diversion of an Instrument from International Traffic-Use

Storage

An example of diversion from international traffic is use of an instrument of international traffic to store merchandise. CBP has ruled that storage of merchandise on pallets other than the pallets on which the merchandise entered the U.S. results in the pallets losing their status as instruments of international traffic. [20]

2. "Containers" under Article 1, Customs Convention on Containers that Do Not Exit the U.S within 365 Days of Admission into the U.S.

An exit from the U.S. means a movement across the border of the U.S. into a foreign country where either all merchandise is laden from the container or merchandise is laden aboard the container (if the container is empty).[21] Such containers which fail to exit the U.S. in 365 days from the date of admission into the U.S. are deemed to be removed from international traffic and are subject to entry and the payment of duty.[22]

[18] See 19 C.F.R. § 10.41a(f)(1)-(2).
[19] See HQ 101489 (Apr. 25, 1975) and HQ 102607 (Jan. 28, 1977).
[20] See HQ 106944 (Sept. 18, 1984); see also HQ 112705 (May 21, 1993).
[21] See 19 C.F.R. § 10.41a(g)(1)(i) and (ii).
[22] See 19 C.F.R. § 10.41a(g)(3).

3. Repair Components, Accessories, and Equipment of Containers of Foreign Production which are Instruments of International Traffic

Entry is required, without the deposit of duty, for repair components, accessories, and equipment of containers of foreign production which are instruments of international traffic. The person making the entry must file a declaration with the port director at the port of entry that the repair component was imported to be used in the repair of the container of foreign production (which is an instrument of international traffic) or that the accessory or equipment is for a container of foreign production (which is an instrument of international traffic). The port director must be satisfied that the importer of the repair component, accessory, or equipment had the declared intention at the time of importation.[23]

These requirements also apply to repair components, accessories, and equipment of containers of foreign production that are withdrawn from warehouse and do not apply to normal accessories and equipment imported with an instrument that is a "container" pursuant to Article 1 of the Customs Convention on Containers.[24]

Damaged Containers/Repair of Containers[25]

Reexportation of a badly damaged instrument that is a container pursuant to Article 1 of the Customs Convention on Containers is not required if the accident which caused the damage is duly authenticated, and the container is: 1) subjected to import duty and import taxes, or 2) abandoned free of all expense to the Government, or is destroyed under customs supervision at the expenses of the parties concerned.

Any repairs made to an instrument of international traffic, while it is abroad, that is returned to the U.S. and is released is not subject to entry or the payment of duty.

Application of the Coastwise Laws to Instruments of International Traffic[26]

Containers and other articles designated as instruments of international traffic are merchandise subject to the coastwise laws.

EXCEPTION

Vessels of the U.S. prohibited from engaging in coastwise trade and vessels of nations that grant reciprocal privileges to vessels of the U.S.

[23] See 19 C.F.R. § 10.41a(a)(2).
[24] See 19 C.F.R. § 10.41a(a)(3).
[25] See 19 C.F.R. § 10.41a(b) and (i).
[26] See 19 C.F.R. § 10.41a(j).

may transport empty instruments of international traffic between coastwise points if they are owned or leased by the owner or operator of the transporting vessel and are transported by the owner or operator for their use in handling their cargo in foreign trade.[27]

TRUCKS, BUSES, TAXICABS, OTHER VEHICLES, LOCOMOTIVES AND OTHER RAILROAD EQUIPMENT USED IN INTERNATIONAL TRAFFIC

Trucks, busses, taxicabs, and other vehicles,[28] as well as locomotives and other railroad equipment, may also be admitted into the U.S. without formal entry and payment of duty depending on how these modes of transportation and equipment are used in international traffic. [29]

Trucks, Busses, and Taxicabs (Vehicles)

How vehicles may proceed into the U.S. without formal entry and payment of duty depends on whether they are foreign or domestic. In addition, whether a vehicle is foreign or domestic may determine how the vehicle may be used in local traffic. Vehicles manufactured in or regularly imported into the U.S. are considered "domestic".

EXCEPTION

Vehicles subsequent to their manufacture or importation into the U.S., that have been formally entered and cleared through foreign customs into another country or used in foreign local traffic other than to return equipment to the U.S., will be considered foreign.

With certain exceptions, noted below, formal entry and payment of duty are not required for domestic vehicles and their equipment that are used in international traffic; however, certain repairs made in foreign countries are dutiable at the time they are no longer used in international traffic. [30]

Foreign-Based Vehicles[31]

These vehicles, regardless of ownership, may be admitted without formal entry and payment of duty if:

1. Their principal base of operations is in a foreign country and such operation is engaged in international traffic; and

[27] See 19 C.F.R. § 4.93(1).
[28] Section 123, Subpart B uses "trucks, busses, and taxicabs" and the word "vehicles" interchangeably.
[29] See 19 C.F.R. §§ 10.41(a) and 123, Subpart B.
[30] See 19 C.F.R. §§ 123.17(a) and (b).
[31] See 19 C.F.R. §§ 123.14(a) and (c).

2. They are arriving with merchandise or passengers destined to points in the U.S.; or

3. Arrive empty or loaded for the purpose of taking out merchandise or passengers.

Foreign-based vehicles may not be used in local traffic in the U.S.

> [F]or purposes of determining whether foreign-based trucks are engaged in 'international' or 'local' (i.e., domestic) traffic as those terms are used in § 123.14 and are therefore subject to the restrictions provided therein, Customs [CBP] will look to the origin and destination of the merchandise carried rather than the actual transportation route of the merchandise on the trucks. Such vehicles engaged, in whole or in part, in the carriage of merchandise originating in one country and terminating in another country shall be considered to be engaged in international traffic. In addition, the movement of such vehicles without a payload between two points in the same country shall not be considered to be a local or domestic movement.[32]

EXCEPTIONS

1. Incidental Carriage: Vehicles may carry merchandise or passengers between points in the U.S. if such carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic. Carriage by a vehicle is incidental when it is traveling in the general direction of an export move or as part of the return of a vehicle to its base country.[33]

2. Foreign-based truck trailers: may carry merchandise between points in the U.S. as is reasonably incidental to its economical and prompt departure for a foreign country.

EXAMPLE: A Canadian-based truck proposed to transport merchandise from Mexico to Texas where it would be unloaded. The truck would then reload the merchandise, take it to another point in the U.S, unload it, and then load new merchandise destined for Canada. CBP held that the use

[32] See Customs Bulletin, Vol. 31, No. 40, p.9 (Oct. 1, 1997); see also HQ H054416 (Apr. 1, 2009); HQ 115893 (Feb. 4, 2003).

[33] The operators of such vehicles being used under this exception cannot be an alien driver unless the driver has met the applicable regulations of the U.S. Citizenship and Immigration Service (USCIS). (formerly the U.S. Immigration and Naturalization Service (INS)). See 19 C.F.R. § 123.14(c)(1).

of the Canadian-based truck would not violate the prohibition against use in local traffic because immediately prior to the transportation of the first load between two points in the U.S., the truck would engage in international traffic by transporting the load between Mexico and the U.S. Further, immediately subsequent to the U.S. transportation of the first load, the truck would engage in international traffic by transporting the second load from the U.S. to Canada.[34]

Vehicles of Foreign Origin[35]

Vehicles of foreign origin which are used, for commercial purposes such as delivery or service trucks, between adjoining or neighboring communities of the U.S. and Canada or Mexico, are subject to duty on first arrival, but may subsequently be admitted without formal entry or payment of duty if they are continuously employed in such service.

Returning Vehicles of Foreign or Domestic Origin[36]

Vehicles of foreign or domestic origin engaged in international traffic may be admitted to the U.S. without formal entry or the payment of duty if:

1. they are taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire; and

2. their identity is established by State registration cards.

These vehicles may be used in local traffic if they used for the incidental carriage of merchandise or passengers for hire between points in the U.S. or between points in a foreign country.

EXCEPTION

If the vehicles are taken abroad for commercial use between points in a foreign country, other than in the course of their use in international traffic, they will be considered exported and must be entered upon return.

Foreign-Owned Vehicles[37]

Foreign-owned vehicles that are brought into the U.S. for the purpose of a) carrying passengers or merchandise between points in the U.S. for hire

[34] See HQ 115893 (Feb. 4, 2003).
[35] See 19 C.F.R. § 123.15.
[36] See 19 C.F.R. §§ 123.16(a) and (b).
[37] See 19 C.F.R. §§ 10.41(d) and 123.14(c)(1) and (2).

or b) as an element of a commercial transaction are subject to treatment as importation of merchandise from a foreign country are required to file a formal entry.

EXCEPTIONS

1. Incidental Carriage: Vehicles may carry merchandise or passengers between points in the U.S. if such carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic. Carriage by a vehicle is incidental when it travels in the general direction of an export move or as part of the return of a vehicle to its base country.[38]

2. Foreign-based truck trailers: may carry merchandise between points in the U.S. as is reasonably incidental to its economical and prompt departure for a foreign country.

Locomotives and Other Railroad Equipment

Whether locomotives and other railroad equipment may proceed into the U.S. without formal entry and payment of duty depends on whether they are foreign or domestic. Locomotives and railroad equipment manufactured in or regularly imported into the U.S. are considered "domestic".

EXCEPTION

Locomotives or railroad equipment, subsequent to their manufacture or importation into the U.S., that have been formally entered and cleared through foreign customs into another country or used in foreign local traffic other than to return equipment to the U.S., will be considered foreign.

All locomotives and railroad equipment not considered domestic are considered foreign.[39] Although formal entry and payment of duty are not required for domestic locomotives and railroad equipment that are used in international traffic, certain repairs made in foreign countries are dutiable at the time they are withdrawn from international traffic.[40]

The following guidance related to foreign locomotives and foreign railroad equipment does not apply to such locomotives and equipment that are

[38] The operators of such vehicles being used under this exception cannot be operated by an alien driver unless the driver has met the applicable USCIS regulations. See 19 C.F.R. § 123.14(c)(1).
[39] See 19 C.F.R. § 123.12(d).
[40] See 19 C.F.R. § 123.13. "Running Repairs" are repairs required to restore a locomotive or equipment to the condition in which it last left the United States and are not dutiable.

already exempt from entry or payment of duty under 19 C.F.R. § 141.4(b)(4).[41]

Foreign Locomotives and Foreign Railroad Equipment

Foreign locomotives and foreign railroad equipment may come into the U.S. as part of a continuous route, without formal entry and payment of duty, to the end of a run and depart for a foreign country depending on how the locomotives and railroad equipment are used on an inward or outward trip and with regard to railroad equipment, whether they are empty.

Inward Trip: Locomotives can be used in connection with taking the inbound train to the last place in a continuous haul, including switching of cars which it has hauled into the U.S. Railroad equipment importing merchandise may continue to the place of complete unloading.

Outward Trip: Locomotives can be used in connection with through trains crossing a boundary, including switching to make up such trains.[42] Railroad equipment may be used with the foregoing foreign locomotives or for local traffic if it is reasonably incidental to its economical and prompt departure for a foreign country.[43]

Empty Equipment: Railroad equipment will be admitted into the U.S. if passengers or goods to be loaded are to be transported directly to or through a foreign country.[44]

Foreign-Owned Locomotives and Equipment

Foreign-owned locomotives and equipment that are brought into the U.S. for the purpose of carrying passengers or merchandise between points in the U.S. for hire or as an element of a commercial transaction, with limited exceptions, are subject to formal entry.[45]

[41] Under 19 C.F.R. § 141.4(b)(4), entry is not required for railway locomotives classified in heading 8601 or 8602, HTSUS, and freight cars classified in heading 8606, HTSUS, on which no duty is owed.
[42] See 19 C.F.R. § 123.12(a).
[43] See 19 C.F.R. § 123.12(a)(1) and (2).
[44] See 19 C.F.R. § 123.12(b).
[45] See 19 C.F.R. § 10.41(d). Section 10.41(d) sets forth limited exceptions to this requirement which are set forth in 19 C.F.R. §§ 123.12 (a) and (b) and 141.4(b)(4).

PENALTIES FOR IIT VIOLATIONS

The improper use of any foreign locomotive, other foreign railroad equipment, or vehicle in violation of §§ 123.12 and 123.14, may result in penalties being incurred under 19 U.S.C. § 1592. See 19 C.F.R. §§ 123.12(c) and 123.14(d).

The applicable CBP regulations regarding penalties for failure to report the diversion or withdrawal of an instrument of international traffic or to enter or pay duty for such is found in 19 C.F.R. § 10.41a(h) which provides for the payment of liquidated damages equal to the domestic value of the instrument for each instrument of international traffic diverted or withdrawn.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the "Know Before You Go" publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is http://www.cbp.gov

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of Importing Into the United States contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. Importing into the United States is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:…"* series. Check the Internet web site http://www.cbp.gov for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

"Your Comments are Important"

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-888-NO-DROGA

Visit our Internet web site: http://www.cbp.gov