

## **United States Customs Law: Let the Trader Beware**

Legal Alert  
August 1, 2005

Garvey Schubert Barer Legal Update, August 1, 2005.

Gitano: A name that should strike fear in the hearts of any company that trades with the United States. Why? Because Gitano was a thriving, profitable apparel company that was undone by troubles it had with the United States Customs Service – or as it is now known the United States Bureau of Customs and Border Protection.

Several years ago Customs brought criminal charges in the United States against several Gitano executives. The United States government alleged the company had entered goods into the country at artificially low values, but had invoiced the very same merchandise at far higher values for payment purposes. Gitano did so, it was alleged, for the sole reason of evading import duties on its merchandise.

In December 1993, Gitano executives plead guilty to these charges and admitted to having circumvented customs duties on imported clothing. As a result of the charges and an ensuing multimillion dollar penalty case against the company, Gitano's largest customer, Wal-Mart Stores, announced it would no longer do business with the company, adhering to strict Wal-Mart company standards regarding vendor practices. In January 1994, one month after the charges, Gitano's Board of Directors concluded the company could not operate without Wal-Mart's support. The board put the company up for sale.

Gitano's swift demise demonstrates the powerful affect Customs has on companies that knowingly falsify or omit information that must be reported to the United States government. In addition to criminal prosecution for violations of the Customs laws and regulations, these companies risk severe monetary penalties, merchandise seizures, negative publicity and termination of business.

Anyone importing goods to the United States must be aware of the various types of penalties and take steps to avoid getting charged with violations, since the costs for violations can be staggering. This is particularly true for imports of products under a US antidumping order. The US Customs Service has told the Congress that it is missing \$224 million dollars in antidumping duties on Chinese products imported under antidumping orders.

Because of this problem, the Congress is putting extreme pressure on the US Customs Service to vigorously enforce US antidumping orders. The Customs Service, therefore, is watching imports of Chinese products under antidumping orders very, very closely. As a result of Customs fraud problems with imports of garlic and crawfish under antidumping orders, certain

people working at US importers, two Chinese nationals, have already been sent to prison in the United States. In the Garlic case, the sentence was five years in the Federal prison.

### **Administrative Penalties**

Administrative or civil monetary penalties may be imposed for certain violations of the Customs laws. These are found in the United States laws at 19 United States Code Section 1592. The statute states that if there is a fraudulent violation, the penalty is frequently the full amount of the merchandise's domestic value. Note that "domestic value of the merchandise" will be much greater than the import value or the purchase price of the goods in the exporting country. It is typically the retail value of the goods as determined by Customs. This is often a very high price indeed.

According to Customs policy, a violation is determined to be fraudulent if it results from an act or acts (of commission or omission) deliberately done with intent to defraud the revenue or to otherwise violate the laws of the United States, as established by clear and convincing evidence. Even if fraud cannot be shown, the violation may be considered gross negligence or negligence. If these 'lesser' offenses are shown, the penalties may still be severe; for example, in cases of gross negligence four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise. A negligent violation is punishable by a civil penalty amounting to the lesser of the domestic value of the merchandise, or two times the lawful duties, taxes, and fees of which the United States is deprived, or if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

Goods may be forfeited under 19 USC Section 1595a. As well, Customs can assess "marking duties" amounting to an additional 10 percent of the value of the goods if they are not properly marked as "Made in X Country." If an attempt is made to conceal the true country of origin of the goods as a means of avoiding duties or dumping or countervailing assessments, then there may be an additional 10 percent duty imposed and the false markings would have to be removed and correct markings added.

### **Criminal Penalties**

If a violation is considered particularly severe, there may also be criminal charges brought against the individuals or companies involved. The Customs laws contain several criminal provisions and can be imposed for making false official statements, smuggling, or a host of other offenses. Conviction can include prison time of up to five years and million dollar fines.

Perhaps worst of all is something often called a "corporate death penalty." Violating companies may be denied trade privileges to the United States for a period of years, and may extend not only to the company that committed the violation but also to related companies. In one case, the "blacklisting" extended to 46 entities located in 13 different companies. Also, in that case the violating company was forced to pay a fine of \$3.3 million. Worse than that, because the

company could not trade with the United States in the first year alone it calculated a loss of over \$27 million in business because of the denial.

### **Incidental Penalties – Bonds, Inspections, Import Delays**

Although they are not formally designated as penalties, other consequences may result from violating the Customs laws or presenting false statements in the United States. If Customs believes a company has been guilty of fraud or wrongfully evading Customs laws, the company may find most if not all of its entries go through "intensive inspections." This involves putting containers aside and waiting until personnel is available to thoroughly inspect the container. This may include unpacking all products from the container and removing all goods from their cartons. Finally, all of the goods must be repackaged. As a result, what should have taken several hours for clearance through Customs becomes an ordeal that can take weeks or even months.

Customs also may increase the amount of bonds and require cash deposits or security for the bonds. The bonding companies may refuse to write bonds sought by a company that has been charged with fraudulent activity. Already Customs is implementing much more stringent bond requirements for importers of agriculture and aquaculture goods, such as mushrooms, honey, crawfish, shrimp or catfish. If there is suspicion of fraudulent activity, bonds may be difficult if not impossible to obtain and full security for the maximum amount of the bond will be required.

Attempts to evade Customs laws can also lead to problems with other governments. The United States and most other industrialized nations are members of the World Customs Organization, so that they communicate with other Customs agencies and may well exchange information. More significantly, for every import there is also an export. If there is a violation or fraudulent statements involved in an import, there is likely also a violation in the related export. Most exports require detailed licenses or reports. Each country's embassy frequently has Customs officials as part of the staff. They are in close contact with the home country and exchange information about violations.

### **Other Laws Customs Administers**

United States Customs also administers laws and regulations for other governmental departments, such as the United States Agriculture Department and Food & Drug Agency. Many United States and international regulations govern the import of goods and packaging material. For example, regulated items include the wood of which pallets are made, the type of endangered species that may be imported, and the types of food and drugs that may be entered. Registration of manufacturers of most food items and notices of shipment of these goods are now required by bioterrorism laws and regulations. Violations of the law and regulations may have substantial consequences for civil and criminal penalties.

Even if the individual is not in the United States, there may be extradition to the United States to stand trial. If the exporting country does not extradite the person, there is always the danger that if they leave the exporting country they will be arrested and extradited. Fines against companies may be collected by assets in the United States.

**Let the International Trader Beware**

In sum, companies that purposely or knowingly establish sham entities for the purposes of avoiding the payment of "ad valorem" or antidumping/countervailing duties are committing fraud. At a minimum, these companies may:

- Lose their rights to import to the United States
- Face the real possibility of merchandise seizure and/or destruction by Customs
- Be assessed severe monetary penalties ([View a Penalty Flowchart](#))
- Undergo criminal prosecution
- Lose customers in the United States
- Have their good names damaged in the court of public opinion, with attendant negative publicity and concerns of illegal activity

As indicated, noncompliant importers may be denied trade privileges to the United States for years. And they run the real risk of losing vital customers, facing long delays at the border, and experiencing corporate dissolution. The Gitano, Garlic and Crawfish cases starkly illustrate the potential consequences for companies that knowingly attempt to circumvent customs law in the United States – let the trader beware.