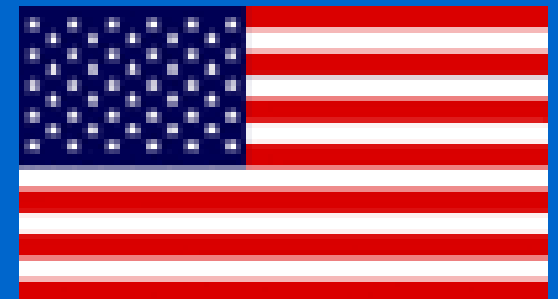


# Understanding U.S. Customs Documentation and Requirements *and* Intellectual Property Rights

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## Getting Your Goods Through U.S. Customs and Border Protection

- Customs has changed: Onus is the importer!
- Do your homework! The importer is responsible to do things correctly
- Customs has moved from a transactional view to an audit/compliance driven approach
- Knowledge and planning are more important today

**Holds and physical examinations  
cost time and money!**

# The U.S. Import Process and Documentation

- No “import license” is required but an importer number is!
- A critical document is your **commercial invoice**--no form but should:
  1. **Describe** the item clearly: Detailed description of the merchandise with the names by which items are known, the grade and quality, and the symbols and marks under which items are sold in the country of exportation
  2. Give the **quantity**: in weights and measures
  3. State the **value** (either price paid, or estimated value based on other considerations.) Give both the value in foreign currency and U.S. dollars.
  4. Country of **Origin** (where the item was made)
  5. Where it was **purchased**
  6. **Name** of the business or person selling the merchandise
  7. **Location** of the business or person selling the merchandise
  8. **Name and address** of business or person buying the merchandise, and if different from the importer,
  9. The **U.S. address** of the person or business the goods are being shipped to.

## Other documents/forms?

For commercial goods *over* \$2000USD:

- Entry Summary (CBP 7501)
- Customs Bond (CBP 301)
- Packing Lists
- Carrier Documents (Bills of Lading, AWBs)
- Other Border Agency Forms, Licenses, Permits and Certificates (if required--depends on the commodity and origin)

**Increasingly electronic!**

# Details, Details, Details

The “Big 3” items in any Customs Transaction:

1. **Classification:** Use HTS number
2. **Value:** Use “Transaction Value” but beware
3. **Origin:** Not as easy as it sounds!

**Can get complicated! CBP encourages visits to the local port's Import Specialist**

## Chapter 4: Rules of Origin

- “an originating good where it is imported *directly* from the territory of one Party into the territory of the other Party”
- “for goods other than those covered by the rules in Annex 3-A (Rules of Origin for Textile or Apparel Goods) or Annex 4-A, the good is a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties; and the sum of (i) the value of materials produced in the territory of one or both of the Parties, plus (ii) the direct costs of processing operations performed in the territory of one or both of the Parties is not less than *35 percent* of the appraised value of the good at the time it is imported into the territory of a Party;<sup>1</sup> or”

**“Each Party shall issue *written advance rulings* prior to the importation of a good into its territory at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party, on the basis of the facts and circumstances set forth by the requester”--Chapter 5**

## Do yourself a favor and hire a Customs Broker!

“As an importer, you have the option of hiring a Customhouse broker to file your entry with CBP, or you can do it yourself - although there are so many details ... we strongly advise using a broker...Because filing a formal entry is so complicated, CBP suggests you consider hiring a Customs Broker to clear your goods for you.”--*CBP Website*

**Especially in the beginning, the broker  
needs to pay attention!**

# Interview Checklist to make sure you hire a good broker!

- Does your firm have a specific area of expertise?
- How do you let your clients know of regulatory changes that affect the goods they import or export?
- Do you have experience with and current knowledge of the goods that will be imported by my business? Can you provide me with some references from clients who import the same or similar items?
- What do you require from me to begin development of my database records?
- How will we work together to develop a compliance plan to clarify our responsibilities and minimize our exposure to penalties ?
- Can you communicate electronically with me, my vendors, carriers, CBP, and other government departments?
- What has your company done to prepare for 10 + 2 and other issues that require advance electronic communication of data?

# Keep asking questions!

- How can you help me prepare and comply with these requirements?
- What are your release procedures?
- What are your accounting procedures? What are my payment options? Will you require a deposit from me to cover duties and taxes?
- What are your charges based upon?
- How do you define any “consulting” that may be required?
- What are my billing options? Is there a minimum or maximum fee?
- Should an error be made in calculating the amount owed to CBP, what are your recovery procedures? What are my obligations?
- What information do you have concerning US import issues that I may find useful?
- How many Licensed Customs Brokers do you have on staff? Will one of these individuals be handling my importations?
- Are you affiliated with any non-U.S. customs brokers? Carriers? Freight Forwarders?
- Can you provide me with a regular report that details my import and export history?
- Are you a member of the National Customs Brokers & Forwarders Association of America (NCBFAA)?

# There are possible bumps in the road !

- Security Filings: ISF and 10 + 2
- Lacey Act: Wood and Wood Products
- CPSIA: Consumer Product Safety Improvement Act of 2008
- Bioterrorism Act of 2002 (FDA prior notice)
- International Plant Protection Convention (IPPC): Wood Packing Material (WPM) certification and fumigation
- Shady practices!

# Resources

- *Importing into the United States: A Guide for Commercial Importers*
- U.S. Customs and Border Protection: [www.cbp.gov](http://www.cbp.gov)
- CROSS: <http://rulings.cbp.gov/>
- HTS Website: [Dataweb@usitc.gov](mailto:Dataweb@usitc.gov)
- The Journal of Commerce (paid) <http://www.joc.com/>
- American Shipper (paid)  
<http://www.americanshipper.com/newweb/index.asp>
- WorldTrade\INTERACTIVE  
<http://www.strtrade.com/wti/register.asp>
- Law Office, George Tuttle <http://www.tuttlelaw.com/>
- Global Trade News <http://international.ups.com/>
- The Ex/Im Daily Update: Send request to [James.Bartlett@NGC.com](mailto:James.Bartlett@NGC.com)

# Overview of Intellectual Property Chapter

Copyrights, Patents, and Trademarks

# Introduction: Why Intellectual Property?

- Incentives for innovation, investment, technology transfer
- Deters unfair competition
- Harnesses creativity for economic, social and cultural development
- Improves IPR systems of trading partners

# Purpose of IP in Free Trade Agreements

- Clarify Certain TRIPS (Trade Related Intellectual Property Agreement) Provisions
  - E.g., data exclusivity
- Update Protection
  - E.g., WIPO (World Intellectual Property Organization) “Internet” Treaties
- Require Adherence to Additional International Agreements

# Comparisons

- Highlights of IPR Chapter to follow
- Some minor variations across various FTAs

# International Agreements

- Patent Cooperation Treaty (1970)
- Brussels Satellite Signals Convention (1974)
- Madrid Protocol (1989)
- Budapest Treaty on Deposit of Microorganisms (1980)
- UPOV – Plant Varieties (1991)
- Trademark Law Treaty (1994)
- WIPO Copyright Treaty (1996)
- WIPO Performances and Phonograms Treaty (1996)

# Copyright Provisions

- Term
- Temporary Copies
- Communication to the Public Right
- Technological Protection Measures
- Encrypted Satellite Signals

**Protect Your IPR by Recording Your Trademarks and Copyrights:**

[http://www.cbp.gov/xp/cgov/trade/priority\\_trade/ipr/protect\\_ipr.xml](http://www.cbp.gov/xp/cgov/trade/priority_trade/ipr/protect_ipr.xml)

# Trademarks Provisions

- Non-visual Marks
- Certification Marks
- Geographical Indications
- Transparency and Due Process
- No Mandatory Recording

# Domain Names

- Uniform Domain Name Dispute Resolution Policy (UDRP)
- Public access to database of domain name registrants

# Geographical Indications

- Eligibility
- Formalities
- Protection Refusal

# Patents

- Availability
- Eligible Subject Matter
- Grace Period
- Parallel Imports

# Regulated Products

- Data Exclusivity
  - Pharmaceutical test data
  - Agricultural chemical products
- Patent Term Extensions
- Processing Delays

# Regulated Products (cont'd)

- Patent Linkage
- Patent Owner Notification

# Enforcement Provisions

- Compensatory Damages
- Border Measures
- Ex Officio
- Criminal Procedures and Remedies

# Protect! Patents, trademarks, and copyrights are valuable intellectual property.

- Intellectual Property: Government to Government Assistance
- Register all intellectual property including your inventions, industrial designs, marks and copyrights
- Include protection clauses in all contracts and agreements based on and tied to the rules of the US intellectual property rights regime and the FTA
- Trade Secrets (e.g., technical or operational information that is unknown to the public, economically beneficial to the owner, and reasonably protected by the owner), mark all confidential items, restrict access to trade secrets, and implement confidentiality policies and other agreements with employees
- Include strong non-compete, confidentiality and non-disclosure provisions for trade secrets in your contracts with agents, distributors, and other partners
- Make intellectual property protection a core responsibility of your distributors, agents, and other US partners

# Be Careful with Your Intellectual Property

- Before you select a partner, conduct due diligence on suppliers and distributors, researching their networks and identify any weak points where counterfeiting could occur
- Select partners with brand images and reputations of their own to protect
- Conduct periodic audits of the controls for intellectual property protection maintained as part of your trading relationships
- On your own, or through you business association, advocate aggressively in support of intellectual property protection
- Become aware of the issues by staying current with US trends (e.g., US government resources include: the US Department of Commerce, the US Foreign Commercial Service, the US Patent and Trademark Office, U.S. Customs and Border Protection)

# Resources

- USPTO.gov
  - USPTO “IP Basics” Slide Presentations:  
[http://www.uspto.gov/web/offices/dcom/olia/conf\\_ip\\_mrkt\\_place.html](http://www.uspto.gov/web/offices/dcom/olia/conf_ip_mrkt_place.html)
- STOPFakes.gov – many resources, including -
  - SMEs IP Training Tutorial (from the USG)
  - at <http://www.stopfakes.gov/525/menu/index.htm>
- WIPO SMEs Portal: <http://www.wipo.int/sme/en/>
- WWW.CBP.gov