

November 13, 2007

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MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
ASSISTANT DIRECTORS, TRADE, FIELD OPERATIONS
OFFICE OF FIELD OPERATIONS

FROM: Executive Director, Trade Policy and Programs
Office of International Trade

SUBJECT: TBT-07-021 Post-Textile Production Verification Team Visit
Detention Policy and Penalties for Importer Self-Assessment
Participants Importing Textiles and Textile Products

BACKGROUND

To reinforce U.S. Customs and Border Protection's (CBP) risk management program, increase the efficiency and effectiveness of resource use, and enhance the promotion of legitimate trade, importers that have been approved under the Importer Self-Assessment (ISA) program will not have goods subject to detention, under specific circumstances resulting from Textile Production Verification Team (TPVT) visits.

Subsequent to CBP's TPVT visits at foreign factory locations, certain conditions formerly warranted that goods be detained during the request for and review of production records. Typically, the exclusion rate for those importers who are ISA participants has been minimal. Therefore, this memorandum modifies the detention practice for shipments from ISA participating importers.

ISA DETENTION EXEMPTION POLICY

Usual procedures for shipments that are detained as a result of TPVT findings require the presentation of production records to ascertain the country of origin and to determine admissibility. In certain cases, shipments from ISA participating companies will not be detained. In those circumstances, CBP will conditionally release the merchandise and immediately issue a Request for Information (CBP Form 28) to obtain production records to determine the country of origin. In addition, the Import Specialist will contact the National or Port Account Manager of the ISA company, as applicable, who will work with the account to ensure maximum compliance with minimum disruption to the company's trade activities.

This exception to the detention policy does not apply to ISA participants using manufacturers the TPVT has identified that 1) have falsely declared a country of origin; 2) were closed at the time of the visit and were verified closed at the supposed time of production of the goods; or 3) never existed.

EXEMPTION PROCEDURES

Normally, a shipment identified based on TPVT findings is not to be released until the country of origin is verified. However, if the importer is an ISA participant, the shipment may be conditionally released if it meets certain conditions. CBP will take the following steps to determine eligibility for release and apply post release procedures:

- I. The port will ascertain whether an importer is an ISA participant.
- II. If the importer is identified as a participant in the ISA program and the manufacturer is not barred from this detention exception, the goods are to be conditionally released. Concurrently, the Import Specialist will prepare a CBP Form 28, Request for Information, and notify the importer's Port or National Account Manager.
 - A. The CBP Form 28 will request production records to confirm origin.
 - B. The Account Manager will notify the importer that the manufacturer or supplier for a given shipment has been designated as a factory of concern based on a TPVT visit and assist the account, ensuring timely submission of documentation to substantiate compliance with CBP laws and regulations.
 - C. The ISA company may decide either to hold the goods until admissibility is determined or to allow the goods to continue to move through the supply chain.
- III. If the documents the importer presents substantiate production in the declared country, no further action is warranted by the port or importer.
- IV. If the documents fail to prove production or if the importer does not submit the requested documents, the merchandise, though conditionally released, is deemed inadmissible, and a redelivery notice is to be issued to exclude the merchandise. Pursuant to 19 CFR 141.113(b), the redelivery notice must be issued within 180 days of release of the goods.
 - A. If the ISA company did not maintain custody of the goods, whereby the goods are not available for redelivery to CBP, the following actions will be taken for the *first violation*:
 1. Assess liquidated damages for failure to redeliver the merchandise;
 2. Initiate a 19 USC 1592 penalty wherein transshipment is an aggravating factor in the mitigation;
 3. The Textile Operations Branch (TOB) notifies the Account Manager that the ISA participant has a violation pertaining to origin; and

4. The ISA company becomes subject to the standard detention policy for non-ISA participating companies.
- B. If the ISA company did not maintain custody of the goods, whereby the goods are not available for redelivery to CBP, the following actions will be taken for the *second violation*:
1. Assess liquidated damages for failure to redeliver the merchandise;
 2. Initiate a 19 USC 1592 penalty, with minimum or no mitigation allowed;
 3. The TOB notifies the Account Manager that the ISA participant has a violation pertaining to origin; and
 4. The company is removed from the ISA Program. Upon demonstrating that it has met the prerequisites for admittance into the program, following the normal application process, the company may re-apply to the ISA Program.
- C. If the ISA company maintained custody of the goods and has returned them to CBP custody after the issuance of a redelivery notice:
1. Initiate a 19 USC 1592 penalty wherein transshipment is an aggravating factor in the mitigation; and
 2. The incident is recorded in order to establish a basis for a pattern of conduct.
 3. If this is a repeat offense, the procedures under IV.B are to be followed, other than the assessment of liquidated damages, since the goods will have been returned to CBP custody.

ACTION

In the absence of deterring factors, ISA participating companies will be exempt from the normal detention policy, and CBP will follow the alternate enforcement route given here.

Import Specialists, CBP Officers, and National and Port Account Managers are to work cooperatively, as outlined above, with companies that participate in the ISA Program.

Please pass this memorandum to Port Directors, Assistant Port Directors, Import Specialists, Entry Specialists, National Account Managers, CBP Officers, Brokers, Importers, and Other Interested Parties.

INFORMATION

For additional information, please contact Ms. Nancy Mondich at 202-863-6524, Ms. Jacqueline Sprungle at 202-863-6517, or Mr. Robert Abels at 202-863-6503.

/s/

Brenda B. Smith