

Increasing Level of Seizures by U.S. Customs

07-29-11 by [Curt Dombek](#)

Companies are reporting a significant increase in intellectual property seizures at U.S. ports in recent months, resulting in increased supply chain disruptions. Unfortunately, not all of this activity can be explained by more effective enforcement methods. More cases of erroneous seizure have also been observed, and some of these are attributable to difficulty in tracing the valid licensing authority for components incorporated in products that have been manufactured abroad.

Sadly, once the seizure process begins, it takes on a life of its own, with short deadlines, forfeitures and related procedures that present complexities of timing, jurisdiction and filing requirements. Before long, the cost of responding to an erroneous seizure can exceed the value of the individual shipment affected.

Careful attention to the licensing of trademarks by U.S. Customs has the benefit of protecting U.S. trademark owners from the entry of infringing goods. Given the complexity of international supply chains, however, it also poses the risk of disrupting legitimate business transactions if affiliates, authorized component suppliers and sublicensees are not readily recognized by U.S. Customs personnel comparing shipments and associated paperwork against automated lists of licensees.

This increased activity calls for companies importing into the United States to pay greater attention to the trademarks their suppliers are using and implement

measures to protect themselves. Questions importers should be asking include:

- Do our terms of contract with foreign suppliers place clear enough responsibility for intellectual property compliance procedures and the associated financial risk on the suppliers?
- Has our company performed sufficient due diligence on the suppliers we are using and their major subtier suppliers?
- Has our company examined the licenses of our foreign suppliers to ensure not only that the requisite licenses are in place, but that the named licensees correspond to the parties who will appear on the shipping documents for our purchases?
- Has our company verified that these licenses are properly recorded with U.S. Customs?

These are all prudent measures that importers can implement to reduce the risk associated with Customs seizures in this time of increased enforcement activity.

Customs law requires the exercise of reasonable care by importers, so even for relatively infrequent or inexperienced importers an appropriate measure of due diligence is called for. Seizures entail not only the potential loss of the merchandise but also Customs penalties, which can end up exceeding the value of the merchandise seized.

Calibrating an appropriate level of effort in each case calls for consideration of the circumstances of the importer, the volume of business, the nature of the goods, their country of origin and the suppliers involved. The challenge is to manage risk prudently with a level of effort that reduces risk without disrupting legitimate trade.

For additional information, please feel free to contact us.