Homeland Security Investigations

Commercial Trade Fraud Investigations Handbook

HSI HB 17-03 / March 20, 2017

U.S. Immigration and Customs Enforcement

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Foreword

The Commercial Trade Fraud Investigations Handbook provides a single source of national policies, procedures, responsibilities, guidelines, and controls to be followed by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents when conducting investigations on commercial trade fraud. This Handbook contains instructions and guidance to help ensure uniformity and operational consistency among all HSI field offices. Oversight over the Commercial Trade Fraud Investigations Program resides with the Assistant Director, National Intellectual Property Rights Coordination Center (IPR Center).

This Handbook supersedes the ICE Office of Investigations (OI) Handbook (HB) 07-03, entitled, "Commercial Trade Fraud Investigations Handbook," dated December 3, 2007, and all other policies or other documents on commercial trade fraud investigations issued since December 3, 2007.

The Commercial Trade Fraud Investigations Handbook is an internal policy of HSI. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter, nor are any limitations hereby placed on otherwise lawful enforcement prerogatives of ICE. This Handbook is For Official Use Only (FOUO) – Law Enforcement Sensitive. It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with the Department of Homeland Security policy relating to FOUO information and the ICE Directive on Safeguarding Law Enforcement Sensitive Information. This information shall not be distributed beyond the original addressees without prior authorization of the originator. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the HSI Records and Disclosure Unit, as well as the Office of the Principal Legal Advisor at Headquarters and/or U.S. Attorney's Office, are to be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public under the Freedom of Information Act, Title 5, United States Code, Section 552(b), and protected from disclosure pursuant to the law enforcement privilege. Any other requests for disclosure of this Handbook or information contained herein should be referred to the HSI Records and Disclosure Unit.

The HSI Policy Unit is responsible for coordinating the development and issuance of HSI policy. All suggested changes or updates to this Handbook should be submitted to the HSI Policy Unit, which will coordinate all revisions with the IPR Center.

Peter T. Edge
Executive Associate Director
Homeland Security Investigations

MAR 20 2017
Date

COMMERCIAL TRADE FRAUD INVESTIGATIONS HANDBOOK

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COMMERCIAL TRADE FRAUD INVESTIGATIONS HANDBOOK

Chapter 1. PURPOSE AND SCOPE

The Commercial Trade Fraud Investigations Handbook provides policies and procedures for U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents (SAs) and Intelligence Research Specialists when conducting or assisting in investigations related to commercial trade fraud. This Handbook discusses the strategic cooperation of HSI and U.S. Customs and Border Protection (CBP) concerning trade enforcement goals and enforcement partnership.

Chapter 2. INTRODUCTION

HSI's Commercial Trade Fraud Investigations Program focuses on the investigation of commercial shipments of merchandise that have been fraudulently imported into or exported out of the United States through schemes, such as misdescription and misclassification, trade-based money laundering, smuggling, undervaluation and overvaluation, and false claims of country of origin and preferential tariff treatment, to circumvent the payment of duties and other legal requirements associated with importation and exportation. HSI's commercial trade fraud investigative priorities are to combat predatory and unfair trade practices that threaten the U.S. economy and national security, restrict the competitiveness of U.S. industry in world markets, and place the U.S. public's health and safety at risk.

Chapter 3. DEFINITIONS

The following definitions are provided for the purposes of this Handbook:

3.1 Anti-Dumping and Countervailing Duty

Anti-dumping duties (AD) and countervailing duties (CVD) are assessed by the U.S. Government when domestic industries are injured (or threatened with material injury) by dumped or subsidized imports to the United States, respectively. If the U.S. Department of Commerce (DOC) finds that imported goods have been dumped in the United States or subsidized by a foreign government prior to importation into the United States and the U.S. International Trade Commission (ITC) finds injury (or threat of material injury) to domestic industry, DOC will impose an AD or CVD Order. An AD tariff margin will be calculated when DOC determines that a foreign manufacturer, exporter, or a combination manufacturer/exporter is selling a product in the United States at a price that is "less than fair value." This margin is calculated through a comparison of "normal value" in the exporting country where the merchandise is produced against the export price (or constructed export price if the foreign producer and U.S. importer are affiliated) for sales made in the United States. A CVD tariff

margin will be calculated if DOC determines that a foreign government provided an actionable subsidy to a manufacturer, exporter, or manufacturer/exporter of merchandise, such as a subsidy contingent upon export or a subsidy which benefits a particular industry in a particular geographic region. These Orders set the AD or CVD tariff margin going forward and can be retroactive to the date of the preliminary determination; the final duty rate may increase or decrease for a particular company through DOC's administrative review process.

3.2 Drawback

Drawback is the refund or remission, in whole or in part, of a customs duty, fee, or tax which was imposed on imported merchandise. The drawback refund program allows U.S. industry to import goods without incurring most import duties, fees, and taxes when the product will be exported.

3.3 Entry/Introduction

An entry begins when CBP receives documentation (Entry/Immediate Delivery (CBP Form 3461)) or data necessary to secure the release of merchandise from CBP's custody; such information may be submitted in paper form or electronically through the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS). An "introduction" commences when the goods are unladen at a port, whether or not an entry has been made.

3.4 Entry Summary

The Entry Summary (CBP Form 7501) is the documentation required to assess the duties, taxes, and fees associated with an importation. This documentation may be submitted in paper form or filed electronically through ACE, with the estimated duties, taxes, and fees, within 10 working days after the time of entry of the merchandise.

3.5 Harmonized Tariff Schedule

The Harmonized Tariff Schedule of the United States (HTSUS) is a hierarchical structure that describes the classification of goods in trade for duty, quota, and statistical purposes. All HTSUS numbers worldwide are standardized to the first six digits; subclassification with additional digits may differ between countries.

3.6 Import Quota

Import quotas are quantity controls that regulate the amount (volume) of various commodities that can be imported into the United States during a specified period of time. Types of quotas include Tariff Rate Quotas and Tariff Preference Levels, which provide for lower tariff rates for imported goods up to a specified quantity, and then higher tariff rates to be applied once the set quantity is surpassed. Quotas are established by legislative enactments and Presidential

Proclamations or Executive Orders issued pursuant to specific legislation. (Note: As of the date of issuance of this Handbook, quotas exist on agriculture and textile products.)

3.7 In-bond

The in-bond program permits the movement of cargo under a bond through the United States that is destined for other locations – either domestically or outside the United States. An in-bond entry is not a consumption entry and there are no requirements that an importer of record file the in-bond entry. Additionally, neither duties nor taxes or fees are deposited. There are three types of in-bond movements: 1) Immediate Exportation – merchandise entering the United States temporarily and intended for exportation from the same port of entry (POE) (moving merchandise between two shipping companies within a POE for export); 2) Transportation and Exportation – merchandise transiting the United States from one POE to a second POE where the merchandise will be exported from the United States; and 3) Immediate Transportation – merchandise arriving at a U.S. POE and immediately transported to another U.S. POE where an entry will be filed.

3.8 Letter of Credit

A letter of credit is a common international finance instrument that facilitates international trade. It is a contractual agreement whereby the issuing bank, acting on behalf of its customer (importer), promises to make payment to the exporter, provided that the terms and conditions stated in the letter of credit have been met, as evidenced by the presentation of specified documents. These documents can include the bill of lading or air waybill. Letters of credit could also qualify as "monetary instruments" for reporting purposes under the Bank Secrecy Act. (Note: Additional discussion regarding such negotiable instruments may be found in the Financial Investigations Handbook (HSI Handbook (HB) 14-03), dated May 13, 2014, or as updated.)

3.9 Prior Disclosure

Prior Disclosure allows U.S. importers to voluntarily report circumstances of civil customs violations under Title 19, United States Code (U.S.C.), Section 1592 in order to mitigate potential penalties assessed by CBP for negligence, gross negligence, or fraud. If the importer elects to make a complete disclosure of a violation, before or without knowledge of a formal investigation of the violation, the importer may receive reduced penalties. Typical examples of such violations include undervaluation, misdescription of merchandise, overvaluation, AD/CVD Order evasion, improper country of origin declarations or markings, or improper claims for preference under a free trade agreement (FTA) or other duty preference program. (Note: Minor clerical errors do not rise to the level of civil culpability under 19 U.S.C. § 1592.)

3.10 Reconciliation

Reconciliation allows an importer, using reasonable care, to file entry summaries with CBP with the best available information, with the mutual understanding that certain elements, such as the

declared value, remain outstanding. At a later date, when the specifics have been determined, the importer files a reconciliation entry which provides the final and correct information. The reconciliation entry is then liquidated, with a single bill or refund, as appropriate. (See http://www.cbp.gov/trade/programs-administration/entry-summary/reconciliation.)

Chapter 4. AUTHORITIES/REFERENCES

4.1 Authorities

A. 8 U.S.C. § 1225(d), "Inspection by immigration officers" (Immigration Enforcement Subpoena)

B. 13 U.S.C. § 305, "Penalties for unlawful export information activities"

C. 18 U.S.C. § 541, "Entry of goods falsely classified"

D. 18 U.S.C. § 542, "Entry of goods by means of false statements"

E. 18 U.S.C. § 545, "Smuggling goods into the United States"

F. 18 U.S.C. § 548, "Fraudulent removing or repacking goods in bonded warehouses"

G. 18 U.S.C. § 550, "False duty drawback claims"

H. 18 U.S.C. § 554, "Smuggling goods from the United States"

I. 18 U.S.C. § 981, "Civil forfeiture"

J. 18 U.S.C. § 982, "Criminal forfeiture"

K. 18 U.S.C. § 983, "General rules for civil forfeiture proceedings"

L. 18 U.S.C. § 1001, "Materially false, fictitious or fraudulent statement or entry generally"

M. 18 U.S.C. § 1028A, "Aggravated identity theft"

N. 18 U.S.C. § 1029, "Fraud and related activity in connection with access devices"

O. 18 U.S.C. § 1519, "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy"

P. 18 U.S.C. § 1595, "Civil remedy"

Q. 19 U.S.C. § 1304, "Marking of imported articles and containers"

R. 19 U.S.C. § 1307, "Convict-made goods; importation prohibited"

S. 19 U.S.C. § 1481, "Invoice; contents"

T. 19 U.S.C. § 1484, "Entry of merchandise"

U. 19 U.S.C. § 1497, "Penalties for failure to declare"

V. 19 U.S.C. § 1509, "Examination of books and witnesses" (Customs Summons)

W. 19 U.S.C. § 1584, "Penalties for falsity or lack of manifest"

X. 19 U.S.C. § 1586, "Penalties for unlawful unlading or transshipment"

Y. 19 U.S.C. § 1589a, "General authority of customs officers"

Z. 19 U.S.C. § 1590, "Aviation smuggling"

AA. 19 U.S.C. § 1592, "Penalties for fraud, gross negligence, and negligence"

BB. 19 U.S.C. § 1593a, "Penalties for false drawback claims"

CC. 19 U.S.C. § 1594, "Seizure of conveyance"

DD. 19 U.S.C. § 1595a, "Forfeitures and other penalties"

EE. 19 U.S.C. § 1627a, "Unlawful importation or exportation of certain vehicles"

FF. 19 U.S.C. § 1628, "Exchange of information with foreign law enforcement and customs officials"

GG. 19 U.S.C. § 1641, "Customs brokers"

HH. 19 U.S.C. § 1646c, "VIN and Proof of Ownership vehicle export reporting requirement"

II. 21 U.S.C. § 853, "General rules for criminal forfeiture proceedings"

JJ. 21 U.S.C. § 967, "Smuggling of controlled substances; … subpoenas" (Controlled Substance Enforcement Subpoena)

KK. 22 U.S.C. § 2778, "Arms Export Control Act" and 50 U.S.C. § 4614(a)(1), "Enforcement" (Export Enforcement Subpoena)

LL. 31 U.S.C. § 3729(a)(1)(G), "False Claims Act (FCA)"

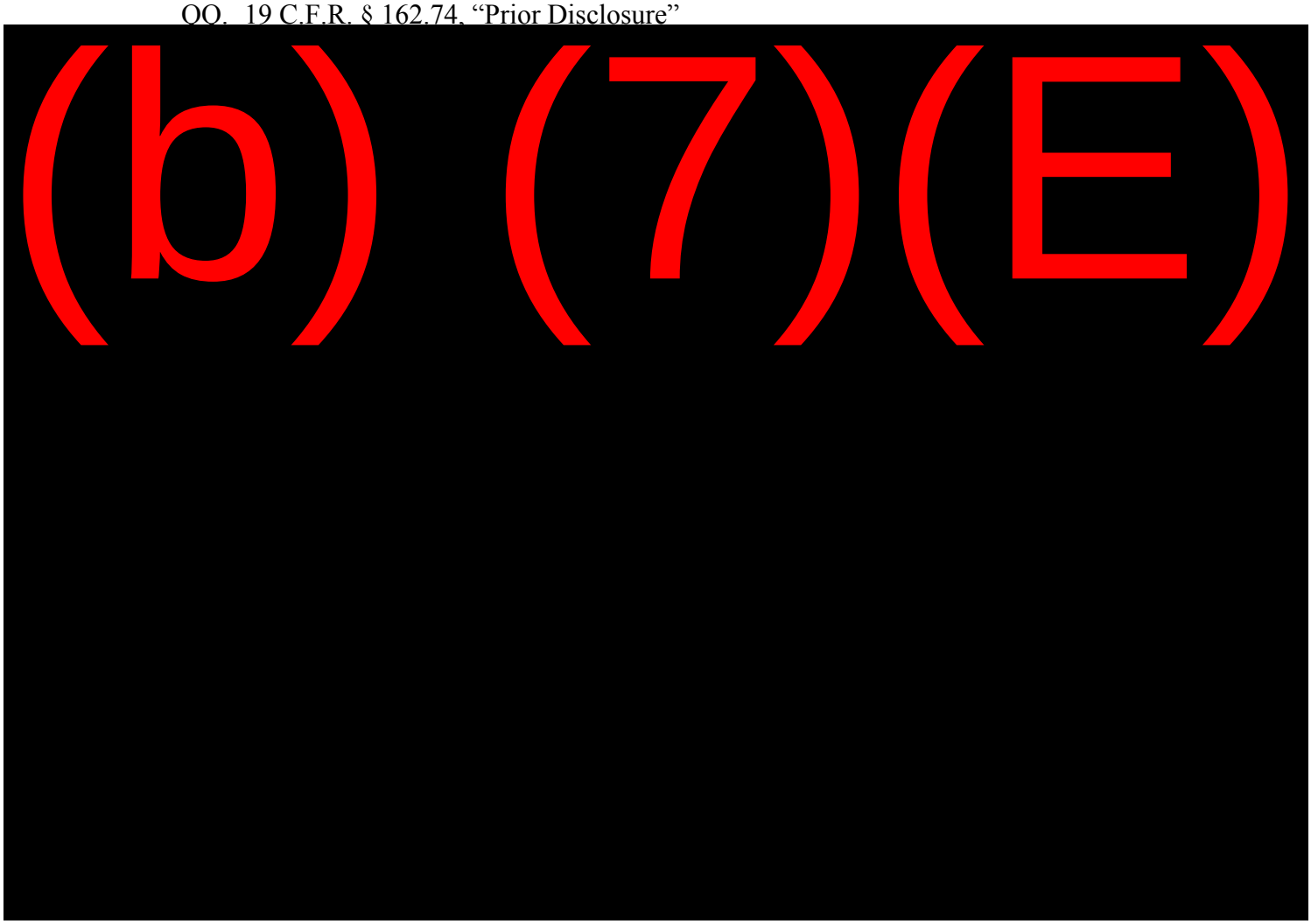
MM. Title 15, Code of Federal Regulations (C.F.R.) Part 30, "Foreign Trade Regulations"

NN. 19 C.F.R. Part 171, "Fines, Penalties, and Forfeitures"

OO. Appendix B to 19 C.F.R. Part 171, "Customs Regulation; Guidelines for the Imposition and Mitigation of Penalties for Violations of 19 U.S.C. § 1592"

PP. 19 C.F.R. Part 192, "Export control"

QQ. 19 C.F.R. § 162.74, "Prior Disclosure"



Chapter 5. RESPONSIBILITIES

5.1 Executive Associate Director, Homeland Security Investigations

The Executive Associate Director of HSI has the overall responsibility for the oversight of the policies and procedures set forth in this Handbook.

5.2 Assistant Director, National Intellectual Property Rights Coordination Center

The Assistant Director, National Intellectual Property Rights Coordination Center (IPR Center), is responsible for the implementation of the provisions of this Handbook within HSI.

5.3 Special Agents in Charge and Attachés

Special Agents in Charge (SACs) and Attachés are responsible for implementing the provisions of this Handbook within their respective areas of responsibility.

5.4 Special Agents

SAs are responsible for complying with the provisions of this Handbook.

5.5 Intelligence Research Specialists

Intelligence Research Specialists are responsible for complying with the provisions of this Handbook and providing analytical support to SAs in support of commercial trade fraud investigations.

Chapter 6. OVERVIEW OF THE IMPORTATION PROCESS AND INTERNATIONAL TRADE FINANCE

6.1 Importation Process

When importing goods from other countries, within 15 calendar days of the date that a shipment arrives at a U.S. POE, the importer of record (IOR) must file entry documents with CBP that include the Entry/Immediate Delivery (CBP Form 3461), evidence of the right to make entry, a commercial invoice (or a pro forma invoice when the commercial invoice cannot be produced), a packing list, and other documents necessary to determine merchandise admissibility. The right to make entry is limited to (1) the owner or purchaser of the merchandise; or (2) when appropriately designated by the owner, purchaser, or ultimate consignee, a person holding a valid customs broker license under 19 U.S.C. § 1641. USCS Directive 3530-002A, Right to Make Entry, dated June 27, 2001, "notes that the terms 'owner' and 'purchaser' include any party with a financial interest in the transaction, including, but not limited to, the actual owner of the goods, the actual purchaser of the goods, a buying or selling agent, a person or firm who imports on consignment, a person or firm who imports under loan or lease, a person or firm who imports for

exhibition at a trade fair, a person or firm who imports goods for repair or alteration or further fabrication, etc."

An Entry Summary (CBP Form 7501) must be filed, along with estimated duties, taxes, and fees, within 10 working days after the time of entry. The Entry Summary documents include the Entry Summary (CBP Form 7501) and invoices and other documents necessary to assess duties, collect statistics, or determine that all import requirements have been satisfied.

IORs must also post a bond with CBP to cover any potential duties, taxes, and fees that may accrue. A continuous or single entry bond must be on file with CBP before goods can be released from customs custody. Bonds may be secured through a U.S. surety company, using U.S. currency or certain U.S. Government obligations.

6.2 International Commercial Trade Finance

International commercial trade is commonly financed through trade instruments such as wire transfers and letters of credit. Letters of credit reduce risk for exporters and importers by ensuring the increased likelihood of delivery of merchandise and release of payment during international commercial trade. Typically, an importer's bank will provide a letter of credit to the exporter's bank providing payment upon presentation of certain documents such as a bill of lading and commercial invoice. Understanding the underlying international trade finance mechanism will assist SAs in conducting a comprehensive investigation not only regarding the fraud but also regarding any related money laundering violations.

Chapter 7. GOAL AND STRATEGY OF COMMERCIAL TRADE FRAUD INVESTIGATIONS

Commercial trade fraud investigations encompass criminal and civil violations of import and export laws and regulations. The goal and strategy of every commercial trade fraud investigation are as follows:

7.1 Goal

To conduct objective and thorough commercial trade fraud investigations that uncover the evidence needed to prove criminal and civil violations.

Investigations are only as good as the evidence gathered. Only objective and thorough investigations can uncover the evidence needed to ultimately secure convictions, make seizures, support forfeitures, and collect civil penalties owed to the United States.

7.2 Strategy

Approach each commercial trade fraud investigation as a potential criminal case.

SAs should conduct commercial trade fraud investigations in a manner designed to objectively identify and obtain all available evidence related to the possible violation of criminal statutes. This includes investigating and identifying:

A. All the parties responsible for the alleged criminal acts;

B. The statutory and regulatory requirements which the alleged violator failed to meet or the prohibited acts the alleged violator committed;

C. The essential elements of those statutes which must be proven to obtain a criminal conviction for the alleged criminal acts;

D. The violator's role and the overt act(s) involved in the violation of U.S. law; and

E. The types and sources of evidence needed to prove the elements of the offense.

SAs should use all appropriate criminal investigative methods and resources, including (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

Chapter 8. OVERVIEW OF COMMERCIAL TRADE FRAUD INVESTIGATIONS

Commercial trade fraud, like most other crimes under HSI's jurisdiction, is motivated by profit. To help stem the flow of illicitly derived proceeds, every commercial trade fraud investigation should include a money laundering charge, if feasible. Violations of 18 U.S.C. §§ 541, 542 and 545 (for imports) and 18 U.S.C. § 554 (for exports), qualify as specified unlawful activities (SUAs) for money laundering in support of 18 U.S.C. §§ 1956 and 1957 charges. (b) (7)(E)
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(b) (7)(E)

SAs should develop and maintain close working relationships with CBP and other federal agencies which may have a role in administering statutory or regulatory requirements associated with the import and export of merchandise into or from the United States.

(b) (7)(E)

8.1 HSI and CBP Strategic Focus and Commercial Trade Enforcement Plan

8.1.1 Strategic Commercial Trade Focus and Commercial Trade Enforcement Plan

To accomplish its commercial trade enforcement mission and meet its trade enforcement goals, HSI has developed a *strategic trade focus* for its enforcement and compliance efforts. (b) (7)(E)

8.1.2 Commercial Importation Trade Focus

CBP and HSI concentrate their enforcement and compliance efforts on violations of U.S. law, including those defined in Titles 18 and 19 of the United States Code and Title 19 of the Code of Federal Regulations. The primary focus of the HSI Commercial Trade Fraud Investigations

Program is to conduct investigations that result in criminal prosecutions and seizures and forfeiture of assets. The second priority is to conduct investigations that result in civil fines and penalties.

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. No. 144-125), which was signed into law on February 24, 2016, is the most comprehensive Customs legislation in over two decades. While the legislation's primary focus centers on CBP, many of its provisions directly impacts HSI's commercial trade fraud, intellectual property, and forced labor enforcement mission. TFTEA imposes additional requirements on HSI, specifically in the areas of antidumping and countervailing duties. (Note: SAs can access the following to read the text of the legislation: https://www.congress.gov/bill/114th-congress/house-bill/644/text.)

8.2 Commercial Trade Fraud Background

HSI has a long history of engagement in commercial trade fraud enforcement, particularly AD/CVD, dating back to the former USCS. HSI works in close cooperation with relevant interagency partners, the private sector, and international counterparts to investigate a broad spectrum of crimes related to commercial trade fraud. HSI targets and investigates goods entering the United States illegally through U.S. POEs and, working in conjunction with CBP, seizes these goods for forfeiture. HSI recognizes that it must partner with the private sector to obtain the necessary information to halt these illegal commercial trade practices. It also is essential that HSI continue to work with all relevant federal agencies to confront this challenge. As a result, HSI has built strong relationships with its interagency partners and international counterparts.

The principal federal law enforcement agencies responsible for enforcing U.S. international commercial trade laws and regulations are ICE and CBP. A common mission of ICE and CBP is to ensure that all merchandise entering the United States is compliant with these laws and regulations. ICE HSI's commercial trade fraud investigations are a powerful enforcement tool for ensuring that these goals are met. Commercial trade fraud investigations encompass all criminal and civil violations and are the sole responsibility of ICE.

8.3 Commercial Trade Fraud Common Schemes

8.3.1 In-Bond Diversion

The in-bond process was established by federal statute to allow merchandise not intended for U.S. consumption to transit the United States or to formally enter the United States at a POE other than the port of original arrival. When conducted legally, in-bond transactions facilitate trade by allowing the use of U.S. infrastructure for the transportation of goods to international and domestic markets.

In-bond diversion schemes involve individuals who exploit the in-bond process to smuggle merchandise into or through the United States. These violations are often connected with foreign trade zones, bonded warehouses, and customs brokers, which are the main components of the in-

bond process. Once an in-bond entry is filed, the goods are either exported from the United States as falsely-declared U.S.-origin goods or illegally diverted into the U.S. commerce without the payment of applicable duties, taxes, and fees after having been destined for exportation. Fraudulent importers may divert the merchandise into U.S. commerce using false documentation with a paper trail and/or other means to show that merchandise was properly exported. Diversion may result in the evasion of duties, taxes, and fees, the entry of intellectual property violative goods, and the entry of potentially harmful goods.

8.3.2 Illegal Transshipment

Illegal transshipment is a common scheme that involves the movement of goods through a third country to mask the goods' true country of origin and, thereby, claim the preferred duty rates of the country through which the goods were transshipped. Illegal transshipment schemes present significant financial incentives for criminal businesses and unique law enforcement challenges. (b) (7)(E) (b) (7)(E) Not only do such schemes enable the evasion of proper duty payments, they can also pose considerable health and safety risks to the American public.

Through this scheme, importers unlawfully evade duties that would have been imposed on their shipments if the true country of origin were declared. The United States levies duties on imported goods on the basis of several factors, including country of origin and the specific HTSUS classification of the goods. Illegally transshipped goods that enter the U.S. supply chain can be substandard in quality and can carry hidden dangers (e.g., children's pajamas that do not meet anti-flammability guidelines). Smuggled or counterfeited products that pose a threat to the health and safety of the public may be transshipped and continue to be a primary concern of the enforcement efforts undertaken by ICE and CBP.

8.3.3 Misdescription/Misclassification

Misdescription and misclassification are methods used to reduce the amount of duty applied to goods imported into the United States from a foreign country. (b) (7)(E)

(b) (7)(E)

8.3.4 False Claims of Origin

In general, every article of foreign origin imported into the United States must be marked in such a manner as to indicate the English name of the country of origin to an ultimate purchaser in the United States. The ultimate purchaser is generally the last person in the United States who will receive the article in the form in which it was imported. (b) (7)(E)

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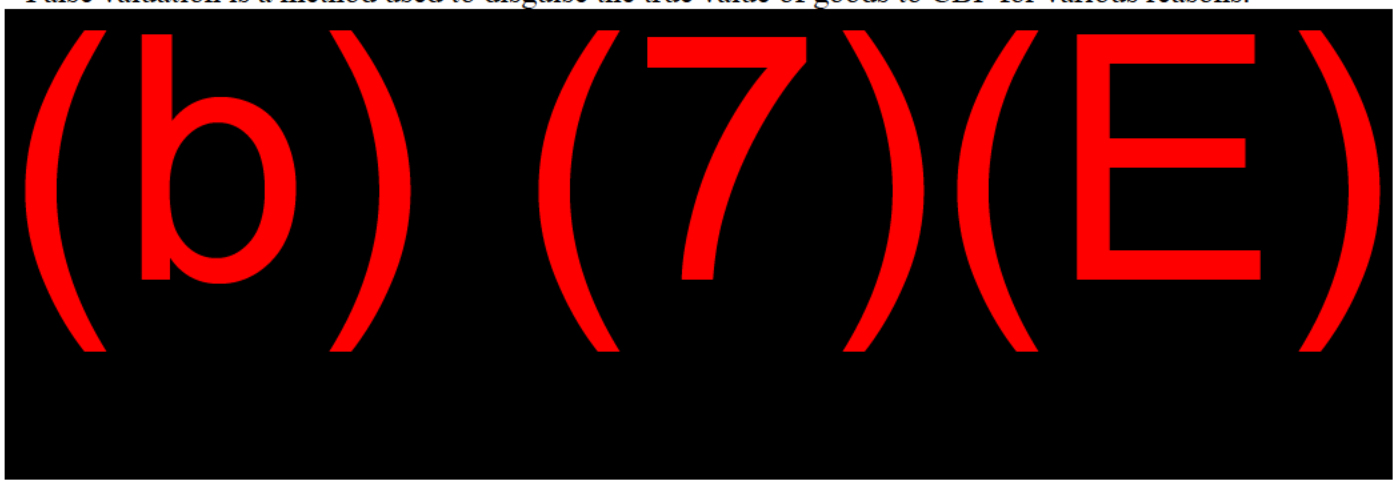
8.3.5 False Valuation

False valuation is a method used to disguise the true value of goods to CBP for various reasons.



8.3.6 Smuggling

Smuggling involves knowingly importing or clandestinely introducing merchandise into the United States contrary to law. (b) (7)(E)

8.3.7 Identity Theft

Identity theft is the intentional use of another person's biographical information and/or personal identifiers without that person's consent. (b) (7)(E)

8.4 Commercial Trade Fraud Investigations Priority Program Areas

8.4.1 Textile Program

Textile investigations include criminal and civil remedies for violations of U.S. importation laws and smuggling schemes such as the undervaluation of textiles entered into the United States for consumption, diversion through the in-bond process, transshipment, and fraudulent FTA claims. The Textile Program coordinates investigations of criminal and civil violations of customs laws carried out through a variety of fraudulent schemes and practices, including false invoicing, false claims of origin, false marking and labeling, misclassification, misdescription, and smuggling.

In fighting illegal textile transshipment fraud, HSI and CBP strengthen the trade capacity of developing countries by conducting Textile Production Verification Team (TPVT) visits to factories abroad. TPVTs enable HSI and CBP to work with foreign governments to assist them in identifying factories that are noncompliant with FTAs and trade preference programs that are designed to develop international economies. Since 1987, TPVTs, in cooperation with foreign governments, verify the production capacity of factories and ensure compliance with the requirements necessary to obtain and maintain duty preference. TPVTs capitalize on the opportunity to enhance international trade relations by discussing with government officials, industry leaders, and factory owners the requirements for the preferential programs and where the factories may be deficient in meeting requirements. TPVTs also educate officials regarding the illegal transshipment of non-partner products where false claims of duty preference and country of origin are made to circumvent duties and other program requirements. (b) (7)(E)

(b) (7)(E)

8.4.2 Anti-Dumping and Countervailing Duties Program

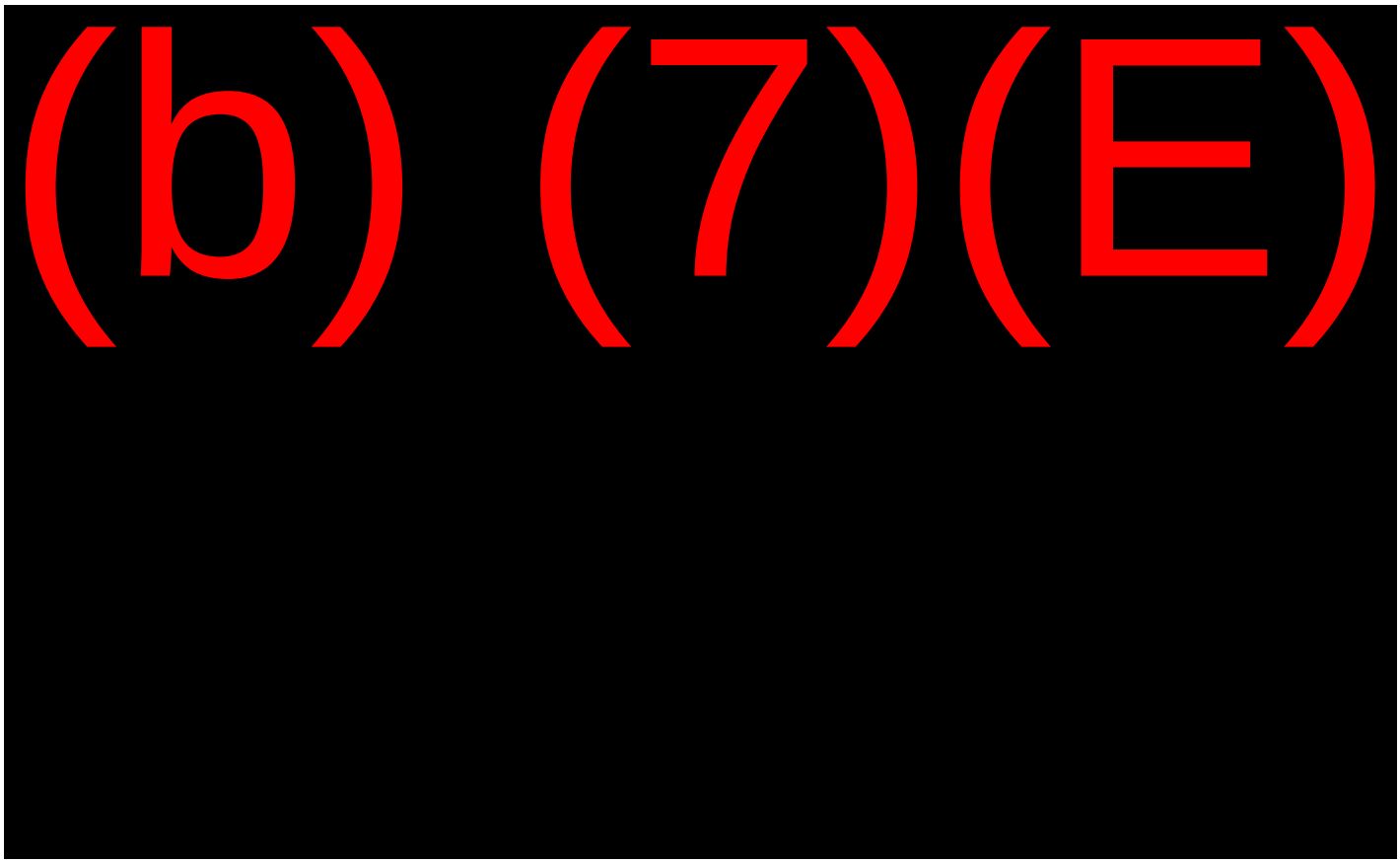
The AD/CVD program involves the coordination of investigations of complex commercial trade fraud schemes by individuals and companies to evade AD/CVD Orders. DOC imposes AD and CVDs on certain imported merchandise to remedy the unfair trade practice of "dumping" merchandise into the U.S. market or offering for sale merchandise which is exported or manufactured by an individual benefiting from actionable subsidies. Dumping occurs when a foreign producer or exporter sells a product in the United States at a price that is "less than fair value." An AD tariff margin is calculated through a comparison of "normal value" in the exporting country where the merchandise is produced against the export price (or constructed export price if the foreign producer and U.S. importer are affiliated) for sales made in the United States. The purpose of selling such merchandise is to gain a comparative advantage over U.S. producers in an effort to eliminate them from the U.S. market and drive them out of business. In addition, foreign producers or exporters may receive a government subsidy, which allows them to more easily compete in the U.S. market and may offset their losses from selling their goods below cost.

A. AD duties are tariffs calculated by DOC and assessed by CBP to level the playing field for domestic industry that is competing with foreign-produced merchandise

being sold in the United States at less than fair value, i.e., merchandise that is "dumped." To calculate AD duties, DOC compares the Normal Value against the Export Price (or constructed export price) and the resulting percentage is the tariff margin. Specific AD rates may apply to a manufacturer, exporter, or manufacturer-exporter combination. If an entity does not qualify for an individual rate, it receives what is known as the "all others" or "country-wide" rate, which is the highest calculated tariff by DOC.

B. CVDs are tariffs calculated by DOC to offset the amount of any "actionable subsidy," such as a subsidy contingent upon export or a subsidy specific to a particular industry or geographic region provided to a foreign exporter or producer by a foreign government.

The ITC and DOC are responsible for conducting AD and CVD administrative investigations under Title VII of the Tariff Act of 1930. Under this law, U.S. industries simultaneously petition the ITC and DOC for relief from unfairly priced or subsidized imports. If DOC makes an affirmative determination to the existence of dumping or a countervailable subsidy and ITC makes an affirmative finding of injury or potential injury to the domestic industry, DOC will issue an AD or CVD Order establishing the AD or CVD margin for all entries of subject merchandise made after the effective date of the Order. CBP is responsible for the collection of the AD or CVD on affected imports in addition to any duty that may apply in Column 1 of the HTSUS.



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AD or CVD evasion leads most often come to HSI or CBP from a competing industry member who has been harmed by an entity fraudulently importing goods to circumvent such Orders. SAs can query current dumping orders via the ITC Web site at: http://www.usitc.gov/trade_remedy/documents/orders.xls. The scope of the Orders can also be found on the DOC Web site at: http://web.ita.doc.gov/ia/CaseM.nsf/136bb350f9b3efba852570d9004ce782?OpenView. In addition, the CBP Intranet hosts an index with all related AD/CVD orders at: http://adcvd.cbp.dhs.gov/adcvdweb.

(b) (7)(E)

8.4.3 Free Trade Agreements Program

Trade agreement investigations are conducted to detect fraud and promote FTA compliance. They may result in significant recoveries of revenue. Trade Agreement investigations center on conspiracies between companies to circumvent FTA origin requirements by entering goods using false country of origin claims. In many cases, goods are transshipped through an FTA country to disguise their true origin and eligibility with the intent of receiving a duty preference established by the FTA. FTA violations also occur when importers falsely claim that a product is manufactured in an FTA signatory country from qualifying materials, when it is actually made from non-qualifying non-signatory originating materials.

As of the date of issuance of this Handbook, the United States has FTAs with Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, South Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore. Similarly, preferential trade investigations may be conducted to detect fraud and promote trade compliance under the Generalized System of Preferences, African Growth and Opportunity Act, Caribbean Basin Economic Recovery Act, and Caribbean Basin Trade Partnership Act. CBP Import Specialists and Regulatory Auditors are a valuable resource for SAs to utilize when attempting to determine the correct country of origin for particular merchandise, as is the CBP Web site at: http://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements.

8.4.4 Forced Labor Program

The Forced Labor Program coordinates investigations into allegations of forced labor, including forced child labor, relating either to the manufacturing or production of goods overseas that are exported to the United States or to labor in the United States that results from coercion, debt bondage or indentured labor, or other non-voluntary means of forcing an individual to provide work or a service.

The Forced Labor Program is committed to identifying importers and foreign manufacturers that are seeking to illegally import merchandise into the United States in violation of 19 U.S.C. § 1307, which prohibits the importation of goods produced by convict, forced, or indentured labor under penal sanction, including forced or indentured child labor. U.S. importers, foreign manufacturers, and criminal organizations that are responsible for facilitating forced labor may be subject to criminal prosecution and the seizure and forfeiture of their merchandise if they are found to be involved in the use of forced labor.

8.4.5 Wildlife and Environmental Crimes Program

The Wildlife and Environmental Crimes Program includes the importation and exportation of endangered and protected species; unapproved or non-compliant automobiles, machinery, and other equipment; environmentally hazardous materials and chemicals; and prohibited and contaminated animal and vegetable food products. Along with the U.S. Fish and Wildlife Service (USFWS), HSI has explicit authority under 16 U.S.C. § 3375 to enforce the Lacey Act.

The Act declares that it is unlawful 1) to import, export, sell, acquire, or purchase fish, wildlife, or plants that are taken, possessed, transported, or sold in violation of any U.S. or Indian law; or 2) to import, export, sell, acquire, or purchase in interstate or foreign commerce any fish, wildlife, or plants taken, possessed, or sold in violation of any State or foreign law.

8.4.6 Tobacco Smuggling Program

The Tobacco Smuggling Program includes investigations into the domestic and international trafficking of counterfeit, genuine, or stolen cigarettes. Counterfeit tobacco is not only a health and safety issue, but also a brand theft issue. Tobacco smuggling may also be associated with duty free store fraud, e.g., tobacco or alcohol is allegedly purchased for export and remains in the United States. Tobacco smuggling is a major fraud and causes LOR for many states and municipalities due to the high rates of tax and duties. As a result, conducting a related money laundering investigation may lead to the potential identification of illicit assets subject to forfeiture.

Illicit tobacco activities attract international and domestic criminal groups with the lure of high profits and relatively low risk of prosecution. Tobacco smuggling into the United States results in the loss of federal and state excise tax revenue. (b) (7)(E)

(b) (7)(E)

(b) (7)(E) The illicit trade in tobacco represents a significant percentage of the global cigarette market which is estimated to amount to tens of billions of dollars. (b) (7)(E)

(b) (7)(E)

8.4.7 Drawback Program

Drawback investigations are closely coordinated with CBP and focus on importers and those individuals submitting false statements to CBP to obtain improper duty drawback refunds. Drawback is the refund of up to 99 percent of the duties, taxes, and fees paid on imported merchandise that is linked to an exportation (or destruction) of an article provided under 19 U.S.C. § 1313. There are numerous categories of drawback, but the most common are: 1) manufacturing drawback; 2) unused merchandise drawback; 3) petroleum derivatives drawback; and 4) rejected merchandise drawback. Drawback permits U.S. businesses to compete in foreign markets without the handicap of including in their costs, and consequently in their sales price, the duty paid on imported merchandise that is not destined for ultimate consumption in the United States.

8.5 Trade-Based Money Laundering

Trade-based money laundering (TBML) is a form of money laundering that utilizes international trade and financial systems to move money with the intent to disguise the true origin of the proceeds. (b) (7)(E)

(b) (7)(E)

(b) (7)(E) CBP RA can assist with these investigations.

Chapter 9. ELEMENTS OF COMMERCIAL TRADE FRAUD VIOLATIONS

All criminal and civil violations are made up of essential elements enumerated in various statutes, regulations, and case law. To prove criminal violations at trial, the U.S. Government must present evidence sufficient to prove, beyond a reasonable doubt, each element of the offense charged. Failure to prove even one element of a violation will result in the acquittal of a criminal defendant with respect to that charge. In civil fraud cases under 19 U.S.C. § 1592, the burden of proof is "clear and convincing" evidence that the violator had knowledge of the fraud. In cases of negligence and gross negligence, the U.S. Government has to prove its case by a preponderance of the evidence. *See* 19 U.S.C. § 1592(e). Civil penalties may be assessed by CBP FP&F; however, SAs should be aware that the U.S. Court of International Trade (CIT) in New York City has sole jurisdiction over any judicial proceeding initiated by the United States to recover monetary penalties claimed under 19 U.S.C. § 1592. *See* 28 U.S.C. § 1582(1). If a 19 U.S.C. § 1592 penalty claim accompanies other criminal or civil charges in an indictment, the U.S. District Court may sever the 19 U.S.C. § 1592 claim from the government's indictment or complaint and refer that portion of the case to the CIT. Penalties pursued under the FCA, 31 U.S.C. § 3729(a)(1)(G), however, are under the jurisdiction of the U.S. district courts rather than the CIT. As a result, a civil FCA penalty may proceed in the same action as criminal charges associated with customs fraud. (Note: FCA cases are discussed in further detail under Section 12.5 of this Handbook.)

(b) (7)(E)

9.1 The Fact of the Violation

The "fact of the violation" is generally the conduct of the individual relating to the alleged violation. If the violator failed to do something required by statute or regulation, this "omission" can qualify as the "fact of the violation." If the violator did something restricted or prohibited by law or regulation, that act is the "fact of the violation." Proving the fact of the violation involves establishing that a statutory or regulatory requirement or prohibition in fact existed and either the requirement was not met or a prohibited act was committed. The fact of the violation will vary depending on the statute's particular elements, such as whether the violation involves a false statement, act, or omission, or an importation contrary to law.

A. Entry of Goods Falsely Classified

The entry of merchandise upon a false classification of weight, measurement, quality, or value or by payment of less than the amount of duty legally due is prohibited by 18 U.S.C. § 541.

B. False Statement, Act, or Omission

The traditional criminal and civil trade fraud violations, 18 U.S.C. § 542 and 19 U.S.C. § 1592, involve a false statement, act, or omission in connection with an import transaction. Investigations must demonstrate that such a false statement, act, or omission occurred. (b) (7)(E)

(b) (7)(E)

(b) (7)(E) Along with motive, establishing level of culpability is critical in proving a trade fraud case. SAs must prove that the defendant/target had the requisite mental state for the violation and make that the centerpiece of the fraud investigation and prosecution. Further, if civil fraud can be proven – i.e., by showing, through clear and convincing evidence, that a materially false statement, omission, or act was knowingly committed in connection with the import transaction (*see* 19 C.F.R. Part 171, Appendix B) – this supports a finding of criminal culpability under 18 U.S.C. § 542 or 545 (albeit with the burden of proof now being "proof beyond a reasonable doubt" as discussed above).

C. Importation Contrary to Law

Importations contrary to law involve the importation of merchandise in violation of some provision of federal law or regulation. However, in some cases – either by statute (*see, e.g.,* discussion of Lacey Act violations in Section 8.4.5 above) or by case law – certain violations of foreign law may also qualify as predicate offenses for the purpose of 18 U.S.C. § 545. Additionally, at least one federal circuit court – the

U.S. Court of Appeals for the Ninth Circuit – has held that a violation of a regulation does not constitute an "importation contrary to law" unless a statute also expressly states that the regulatory violation also is a crime. *See U.S. v. Alghazouli*, 517 F.3d 1179 (9th Cir. 2008). Some statutes criminalize specific types of illegal importations. For example, the federal statute prohibiting trafficking in counterfeit trademark merchandise, 18 U.S.C. § 2320, makes the importation of such merchandise a criminal act if the intentional element of the statute is present. In such instances, criminal charges may be brought for violation of the specific statute. Other statutes restrict or prohibit importations but do not criminalize violations of those provisions. For example, the civil provisions of 15 U.S.C. § 1125, applicable to trademarks, prohibit the importation of merchandise bearing marks or labels which give a false designation of origin or description of the merchandise. The statute, however, does not make such importation a criminal act. In such instances, criminal charges may be brought for a knowing violation of the "contrary to law" provision of 18 U.S.C. § 545, Smuggling goods into the United States, with the underlying violation serving as a predicate offense. Civil penalties also are available under 19 U.S.C. § 1595a(b) for persons aiding unlawful importations, and every vehicle, vessel, animal, aircraft, or any other thing used to aid in, or facilitate, an importation contrary to law is subject to seizure and forfeiture under 19 U.S.C. § 1595a(a). Other civil customs violations, such as failure to comply with the invoice requirements of 19 U.S.C. § 1481, the entry requirements of 19 U.S.C. § 1484, and the declaration requirements of 19 U.S.C. § 1485, may also serve as "predicate" offenses for an "importation contrary to law" under the second paragraph of 18 U.S.C. § 545 *provided that* the SA can demonstrate that these failures to comply with the administrative entry process were done fraudulently or knowingly. In sum, SAs have a broad scope of civil importation statutes and regulations at their disposal to determine whether the administrative requirements imposed by CBP or other federal agencies with regulatory jurisdiction – for example, the U.S. Food and Drug Administration (FDA) or the U.S. Department of Agriculture – were complied with and whether an importer's acts or omissions were done fraudulently or knowingly.

9.2 Materiality

In many criminal fraud statutes, the fact of the violation alone does not constitute a criminal or a civil violation. Investigators must establish the materiality of the fact of the violation. When the fact of the violation involves false statements, acts, or omissions, materiality is defined in terms of the actual or potential effect on the actions or interests of the U.S. Government. A false statement in a declaration, for 18 U.S.C. § 542 purposes, is "material" if it carries the potential to induce CBP or ICE to rely on the false statement, or the false statement affects or influences a legitimate function of the agency, *e.g.,* whether to release merchandise from customs custody. For two of the three distinct violations under 18 U.S.C. § 542, showing LOR/depriving the United States of duties is not required. For the purposes of civil penalties under 19 U.S.C. § 1592, customs regulations state that a document, statement, act, or omission is material if it has the potential to alter the classification, appraisement, or admissibility of merchandise, or the liability for duty. *See* 19 C.F.R. § 171 App. B. Materiality may be shown if the document,

information, or act involved in the violation is one specifically required by statute or regulation. For example, laws and regulations require certain information to appear on an invoice, including the description of the imported merchandise, its purchase price, and its country of origin. The fact that this information is required by statute and regulation tends to show that it is material. It is required because CBP has a demonstrated need for that information in determining the classification, appraisement, and admissibility of imported merchandise. The fact that CBP did not accept or rely on a false statement, act, or omission does not mean that it was not material. The test for materiality is whether the false statement, act, or omission would have had an adverse effect on the U.S. Government's interest *if* it had been accepted. It is sufficient to show that the false statement, act, or omission had the *potential* to affect CBP's actions. CBP need not actually be deceived. Note, however, that satisfying the materiality element of the first two violations under 18 U.S.C. § 542 (i.e., that the entry or introduction was made "by means of" the false statement or documentation) differs among the federal circuits. In the Second and Third Circuits, the term "by means of" is construed broadly to mean anything that has the potential to affect the integrity or operation of the importation process. Conversely, the Fifth and Ninth Circuits read "by means of" to require that, "but for" the false statement or documentation, CBP would not have released the merchandise. In other words, the false statement generally must be made in order to secure the release of contraband or other merchandise which is not otherwise admissible. To avoid the "but for" requirement of materiality in the Fifth, Ninth, and other federal circuits which have not ruled on the issue, SAs are advised to rely on the other violations in 18 U.S.C. § 542: making material false statements in a declaration without reasonable cause to believe the truth of such statements, or willful acts or omissions which deprive the United States of duties lawfully owed on the merchandise. (Note: These distinct violations are discussed further under Section 10.4 of this Handbook.)

9.3 Responsibility

(b) (7)(E)

9.4 Culpability

Once it is determined that a violation has occurred and the responsible parties have been identified, culpability must be established. Culpability is the very essence of any trade fraud case, because it establishes the degree of fault of the violator. Fault is the basis for both criminal prosecution and civil penalty action. Commercial trade fraud laws require importers and other parties involved in import transactions to act *reasonably* in light of their knowledge of the facts.

The degree of culpability determines whether a violator's conduct constitutes merely a civil violation, or both civil and criminal offenses. An individual who acted reasonably may not be culpable. Acting unreasonably is *prima facie* evidence of negligence for the purposes of 19 U.S.C. § 1592. An individual who acted recklessly or with disregard for the facts or a legal obligation as he or she knew them may be found to be grossly negligent under 19 U.S.C. § 1592. Negligent or grossly negligent acts may make a violator liable for civil penalties. A violator who acted knowingly or willfully is culpable of fraud. Fraudulent acts may subject a violator to civil penalties and/or criminal prosecution.

The Customs Modernization Act of 1993 (Mod Act) created a statutory requirement that importers exercise *reasonable care* in meeting their obligations in their import transactions. *The alleged violator may be deemed to have exercised reasonable care, even though a violation resulted. In such instances, the alleged violator may not be culpable of criminal or civil violations arising from their "reasonable" conduct* (Mod Act 1993).

(b) (7)(E)

Culpability is the most difficult element of an offense to prove, in large part because evidence demonstrating culpability will not necessarily be found in documentary evidence. (b) (7)(E)

(b) (7)(E)

Chapter 10. CRIMINAL VIOLATIONS

10.1 Criminal Intent

Criminal trade fraud statutes generally require proof that a violator's illegal conduct was knowing, willful, fraudulent, or a combination of these mental states. (Note: *See, e.g.,* 18 U.S.C. § 541 (knowing false classification of entries), 18 U.S.C. § 542 (knowledge of false statement, or any willful act or omission depriving the United States of lawful duties), 18 U.S.C. § 545 (knowing and willful intent to defraud the United States, or fraudulent or knowing importation contrary to law), and 18 U.S.C. § 554 (fraudulent or knowing export contrary to law). The courts have generally held that criminal trade fraud statutes without a specific intent element require only general criminal intent, i.e., that there is an intentional and reckless commission of an act, as opposed to crimes involving specific intent, in which a violator must purposely intend to violate a specific law or do a specific thing. For example, 19 U.S.C. § 1304(l) requires that a violator who removes required country of origin markings has done so with the intent of concealing the country of origin of the article; the statute is silent regarding whether the actor's intent was done knowingly, willfully, fraudulently, etc. As a result, the criminal intent here would be whether the conduct was done recklessly. However, at least one court has held that the second offense under 18 U.S.C. § 542 – relating to willful acts or omissions – requires that the government prove that the defendant "knew or should have known that his actions would deprive the government of lawful duties." *U.S. v. Yip,* 930 F.2d 142, 153 (2d Cir. 1991).

10.2 Motive

Proof of motive is not a necessary element of a criminal offense. However, evidence of motive may circumstantially demonstrate that a violator's conduct was knowingly and willingly carried out. Proof that a violator profited from the alleged illegal conduct strongly implies that the conduct was deliberate and intentional. Proof of motive may also have strong jury appeal and, moreover, the U.S. Attorney's Office may look to a showing of motive in making a decision to prosecute a criminal trade fraud case. SAs should make every effort to establish the violator's motive for committing a criminal offense.

10.3 Referral of Cases for Criminal Prosecution

The provisions of 19 U.S.C. § 1603, "Seizure; warrants and reports," require that, whenever a violation of customs law is discovered and legal proceedings by the U.S. Attorney in connection with such a discovery are required, it will be the duty of the appropriate customs officer to promptly report the seizure or violation to the U.S. Attorney for the district(s) where such violation has occurred. The report must include a statement of all the facts and circumstances of the investigation in the customs officer's knowledge, with the names of the witnesses and a citation of the statute or statutes believed to have been violated which may be relied upon for conviction and/or forfeiture.

10.4 Primary Criminal Commercial Trade Fraud Statutes

This section provides only an overview of the most common criminal trade fraud statutes (18 U.S.C. §§ 541, 542, and 545) and of issues that SAs should be aware of when conducting investigations of these violations. These statutes may not be the only commercial trade fraud laws that can be used. There are other laws that may be specific to a particular type of merchandise (alcohol, tobacco, etc.) being brought into the United States. In addition, commercial trade fraud investigations may reveal evidence of other criminal activity, such as drug smuggling. SAs should consult with their local OPLA attorneys for a discussion of additional legal aspects of these statutes.

A. 18 U.S.C. § 541, Entry of Goods Falsely Classified

This statute covers the knowing entry of goods at less than the true weight or measure, or upon false classification as to quality or value, or by payment of less than the amount of duty legally due.

B. 18 U.S.C. § 542, Entry of Goods by Means of False Statements

This statute covers several separate violations which do not all involve an actual or potential LOR:

1) The knowing entry or introduction (or attempt), by means of false statements, oral or written, of merchandise into the commerce of the United States.

2) The knowing entry or introduction (or attempt) by means of any false or fraudulent practice or appliance, of merchandise into the commerce of the United States. This includes situations in which no actual falsity occurs in the entry documentation, but where the entry process itself is knowingly used to commit other violations. For example, someone may legally import merchandise that bears the required country of origin markings with the intention of removing those markings after release of the merchandise from CBP custody.

3) Making any false statement in any declaration without reasonable cause to believe the truth of that statement. This differs from the two violations listed in Subsections 1 and 2 above in that the mere making of a knowingly false statement becomes a violation without requiring the U.S. Government to show that the entry of goods was by means of the false statement – a restrictive interpretation in the Fifth and Ninth Circuits. If the importer submits information in the entry summary or in any other entry documents knowing that the information is false, that act constitutes a violation of this section.

4) Procuring the making of any material false statement.

5) Any willful act or omission whereby the United States shall or may be deprived of any lawful duties. As opposed to the provisions discussed immediately above, use of this provision of the statute requires that the act or omission had an impact on duty liability.

This statute is designated as an SUA under 18 U.S.C. § 1956(c)(7). In addition, property which constitutes or is derived from proceeds traceable to violations of this provision are subject to civil or criminal forfeiture under 18 U.S.C. §§ 981 and 982. Merchandise which is stolen, smuggled, or clandestinely introduced is also subject to civil forfeiture pursuant to 19 U.S.C. § 1595a(c), which, as discussed in greater detail in Section 17.3 of this Handbook, is not subject to the requirements of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), such as the mandatory provision of notice of intent to forfeit within 60 days of seizure.

C. 18 U.S.C. § 545, Smuggling Goods into the United States

Two violations within this statute are applicable to the illicit importation of merchandise:

1) Cases in which a violator knowingly and willfully, with intent to defraud the United States, "makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper." This could include the use of fraudulent or forged documents to enter merchandise subject to quota restrictions or invoices that contain false prices or other information. The "intent to defraud" element of this violation also requires a showing that the violator's conduct was undertaken to deprive the government of taxes or duties.

2) Cases in which a violator "fraudulently or knowingly imports or brings into the United States any merchandise contrary to law." Use of this section requires proof that some other provision of law or regulation was violated in the import transaction. For example, the underlying "predicate" offense could be failure to comply with the entry requirements set forth under 19 U.S.C. §§ 1481, 1484, and 1485, mismarking country of origin in violation of 19 U.S.C. § 1304, the unauthorized importation of merchandise bearing an American trademark in violation of 19 U.S.C. § 1526, or trafficking in counterfeit merchandise in violation of 18 U.S.C. § 2320. Essentially, any import-related violation may qualify as a predicate offense provided that an SA can demonstrate that the violation was done fraudulently or knowingly for the purposes of 18 U.S.C. § 545. This second violation under 18 U.S.C. § 545 also has a lesser level of intent – fraudulent or knowing conduct – than the "knowing and willful" level required for the first violation as well as the "intent to defraud" requirement of the first violation. As a result, it is easier to prove.

This statute is designated as an SUA under 18 U.S.C. § 1956(c)(7). In addition, property which constitutes or is derived from proceeds traceable to violations of

this provision are subject to civil or criminal forfeiture under 18 U.S.C. §§ 981 and 982. Merchandise which is stolen, smuggled, or clandestinely introduced is also subject to civil forfeiture pursuant to 19 U.S.C. § 1595a(c), which, as discussed in greater detail in Section 17 of this Handbook, is not subject to the requirements of CAFRA.

D. 18 U.S.C. § 554, Smuggling Goods from the United States

This statute criminalizes the fraudulent or knowing exportation of merchandise from the United States contrary to law. Other export violations, such as a misuse of AES under 13 U.S.C. § 305 or a violation of the Arms Export Control Act (AECA) under 22 U.S.C. § 2778, may serve as predicate offenses for a violation of 18 U.S.C. § 554. The procedural seizure and forfeiture provisions under 19 U.S.C. § 1595a(d) should apply to these cases. In addition, property which constitutes or is derived from proceeds traceable to violations of this provision are subject to civil or criminal forfeiture under 18 U.S.C. §§ 981 and 982. A violation of 18 U.S.C. § 554 also qualifies as an SUA for money laundering violations under 18 U.S.C. § 1956(c)(7).

10.5 Other Criminal Commercial Trade Fraud Statutes

The following is a list of additional criminal commercial trade fraud statutes:

A. 13 U.S.C. § 305

The penalties for unlawful export information activities. Violations include 1) failure to file export information through AES; 2) the knowing submission of false or misleading export information through AES; or 3) the use of AES to further any illegal activity.

(Note: The general information which must be provided upon export is found in the Census Bureau's Foreign Trade Regulations, 15 C.F.R. § 30.16, and is enhanced in the regulations administered by CBP, 19 C.F.R. § 192.1 *et seq*.) While the first two offenses under 13 U.S.C. § 305 relate to fraudulent filings – or a knowing failure to file through AES – the last offense only requires that AES is used to *further* an illegal activity. Thus, if an individual uses AES to export a vehicle from the United States to Mexico and that vehicle is used to conduct narcotics trafficking, the smuggling of merchandise, or the smuggling of persons, for example, even if the AES filings were otherwise legitimate, the individual has nevertheless used AES to further an illegal activity (smuggling) and is subject to criminal penalties under 13 U.S.C. § 305. This section of Title 13 may often serve as a predicate offense for 18 U.S.C. § 554, which, as noted above, is an SUA for money laundering.)

B. 18 U.S.C. § 496

Customs matters (involves the forgery, counterfeiting, or alteration of any writing made in connection with the entry of merchandise).

C. 18 U.S.C. § 544

Re-landing of merchandise (involves the smuggling into the United States of merchandise previously exported free of duty, such as from a Foreign Trade Zone or bonded warehouse, or with an intent to obtain drawback).

D. 18 U.S.C. § 546

Smuggling of goods into foreign countries.

E. 18 U.S.C. § 548

Removing or repacking merchandise in bonded warehouses or the fraudulent alteration, defacement, or obliteration of any marks or numbers placed upon packages deposited in a bonded warehouse.

F. 18 U.S.C. § 549

Removing merchandise from customs custody; breaking seals.

G. 18 U.S.C. § 550

False claim for refund of duties (duty refunds and drawback fraud).

H. 18 U.S.C. § 551

Concealing or destroying invoices or other papers.

I. 18 U.S.C. § 553

Importation or exportation of stolen motor vehicles, off-highway mobile equipment, vessels, or aircraft.

J. 18 U.S.C. § 1589

Benefiting from forced labor.

(Note: There are no specific legal provisions enforced by HSI relating to "forced child labor"; rather, Title 18 and 19 provisions apply to merchandise produced by any forced labor, be it minors or adults.)

K. 18 U.S.C. § 1761

Transportation or importation of merchandise made by prisoners or convicts.

L. 18 U.S.C. § 1762

Failure to mark packages as containing merchandise made by prisoners or convicts.

M. 18 U.S.C. § 2312

Transportation of stolen vehicles.

N. 18 U.S.C. § 2314

Transportation of stolen goods, securities, or money valued at over $5,000 in interstate or foreign commerce.

O. 18 U.S.C. § 2315

Sale or receipt of stolen merchandise, securities, or money valued at over $5,000 which has crossed a U.S. border.

P. 18 U.S.C. § 2320

Trafficking in counterfeit goods or services.

Q. 18 U.S.C. § 2321

Trafficking in certain motor vehicles or motor vehicle parts (involving altered or removed Vehicle Identification Numbers (VINs)).

R. 19 U.S.C. § 1304(l)

Removal of required country of origin markings.

S. 22 U.S.C. § 2778

AECA import and export violations involving items on the U.S. Munitions List. (Note: The Department of State has delegated enforcement control over violations of the International Traffic in Arms Regulations, promulgated under the AECA, to customs officers. *See* 22 C.F.R. § 127.4, 19 C.F.R. § 161.2(a)(1). While several agencies are statutorily authorized to investigate export violations, ICE HSI is the only federal entity empowered with full statutory authority to investigate criminal export violations and enforce all U.S. export laws related to military items, controlled

"dual-use" commodities, sanctioned or embargoed countries, and outbound smuggling.)

T. 49 U.S.C. § 80116

Criminal penalties for fraudulent bills of lading issued by a common carrier for the transportation of goods.

U. 50 U.S.C. § 1701, *et seq*.

Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities (International Emergency Economic Powers Act (IEEPA)) involving international sanctions and embargoes. (Note: U.S. Department of the Treasury's Office of Foreign Asset Control regulations are promulgated under IEEPA and, as a result, a violation of the licensing and sanctions regimes under those regulations serves as a predicate violation for the civil and criminal penalties. *See* 50 U.S.C. § 1705.)

V. 50 App. U.S.C. § 1705

IEEPA civil and criminal penalties.

10.6 Related Criminal Statutes

The following criminal statutes do not relate specifically to trade, but may be violated concurrently with trade fraud violations enforced by HSI.

A. 18 U.S.C. § 371

Conspiracy to commit any offense against or to defraud the United States.

B. 18 U.S.C. §§ 1956, 1957

Money laundering and transactions with financial institutions involving proceeds in excess of $10,000 derived from SUAs.

SAs conducting commercial trade fraud investigations should make every effort to obtain evidence to prove money laundering violations if an offense or offenses being investigated qualify as SUAs; not only will proving a money laundering violation support the seizure and forfeiture of illicitly derived proceeds, but, often, Assistant United States Attorneys (AUSAs) are unwilling to prosecute a case unless it involves money laundering. Presenting a money laundering violation may also increase the likelihood of Department of Justice (DOJ) prosecution for violations, such as customs violations, with which an AUSA may be unfamiliar. (Note: See Chapter 11 for more

information on money laundering laws and their application to commercial trade fraud investigations.)

C. 18 U.S.C. § 1001, Statements or entries generally (False Statements)

This statute generally prohibits the making of any material false statement in a matter within the jurisdiction of any agency of the United States. The elements of a violation of 18 U.S.C. § 1001 are included in the elements of a violation of 18 U.S.C. § 542. However, section 1001 does not require an "importation by means of" the false statement, as does section 542. Thus, section 1001 may be considered an alternative to section 542 in those circuits where the courts have narrowly defined the materiality requirement of section 542 or in instances in which a false statement made to CBP is not clearly tied to an import transaction, such as in some drawback fraud and North American Free Trade Agreement (NAFTA) cases. It should also be noted that section 1001 carries higher penalties (a maximum of 5 years imprisonment) than section 542 (2 years imprisonment).

A material false oral or written statement provided to an HSI SA during an interview of involved parties can result in this statute being added to an indictment as a stand-alone charge. It can also be used as an admonition by an HSI SA before starting an interview in order to obtain true and accurate information from subjects.

D. 18 U.S.C. §§ 1341, 1343, Mail and Wire Fraud

The mail fraud statute (18 U.S.C. § 1341) provides criminal penalties for any use of the U.S. Postal Service (USPS) or private or commercial interstate carriers, such as the United Parcel Service or Federal Express, in furtherance of any scheme to defraud or obtain money under false or fraudulent pretenses. The wire fraud statute (18 U.S.C. § 1343) provides similar criminal penalties for any use of wire, radio, or telephone communications in interstate or foreign commerce. SAs should always consider the use of mail and wire fraud charges in commercial trade fraud cases. Individuals and companies involved in legitimate international trade and importing make extensive use of USPS and express delivery services and, increasingly, of wire communications such as telephones, facsimiles, and email. In like manner, commercial trade fraud violators may use any of these communication media in furtherance of their criminal activity. They may use them to communicate instructions to a foreign supplier for the preparation or submission of false invoices or to provide copies of documents to foreign suppliers, customs brokers, and CBP. Proof of a mail or wire fraud violation requires the U.S. Government to establish the scheme to defraud, as well as use, the mails or wire communications in furtherance of that scheme. Both 18 U.S.C. §§ 1341 and 1343, through Racketeer Influenced and Corrupt Organizations (RICO) statutes, qualify as SUAs for money laundering violations.

E. 18 U.S.C. § 1519, Destruction, alteration, or falsification of records in federal investigations or bankruptcy proceedings.

Although this statute was primarily enacted to address securities fraud issues as part of the Sarbanes-Oxley Act, it has successfully been used in commercial trade fraud investigations and prosecutions. With up to 20 years imprisonment, it carries more of a deterrent effect than a comparable charge under 18 U.S.C. § 1001, with a maximum 5-year imprisonment.

F. 18 U.S.C. §§ 1961-1968, Racketeer Influenced and Corrupt Organizations

Racketeering is a system of organized crime traditionally involving the extortion of money from businesses by intimidation, violence, or other illegal methods. The RICO statutes, found in 18 U.S.C. §§ 1961-1968, target the use of "racketeering activity" or the use of funds obtained through "racketeering activity" to engage in interstate or foreign commerce or in acquiring or controlling any business or other "enterprise" engaged in, or affecting, interstate or foreign commerce. RICO violations under 18 U.S.C. § 1962, as well as the predicate offenses for RICO violations under 18 U.S.C. § 1961, serve as SUAs for money laundering.

Chapter 11. APPLICABLE MONEY LAUNDERING LAWS IN SUPPORT OF COMMERCIAL TRADE FRAUD INVESTIGATIONS

Since criminal enterprises engaged in commercial trade fraud exist to make illicit profits, federal money laundering laws are appropriate and applicable to the investigation and prosecution of these types of criminal organizations. In fact, applying money laundering and asset forfeiture laws is a powerful means of attacking the commercial trade fraud threat. Enhanced penalties for violating money laundering statutes are significant and include fines of up to $500,000 and/or imprisonment of up to 20 years.

11.1 Money Laundering Laws

Federal money laundering laws generally require that there be a financial transaction involving proceeds of an SUA with knowledge by the transactor that the funds are proceeds of some unlawful activity. In both "domestic" money laundering cases (involving the movement of funds within the United States) and "international" money laundering cases (involving the movement of funds to or from the United States), the purpose of the transaction must be to: (1) Promote some violation which is in fact an SUA; (2) Conceal the nature, source, ownership, or control of the proceeds derived from an SUA; (3) Avoid a reporting requirement; or (4) Engage in income tax violations prohibited by 26 U.S.C. §§ 7201, 7206. The key difference between "domestic" and "international" cases involves the "promotion" angle of money laundering. In "domestic" cases, the promotion of the SUA must also involve funds derived from an SUA; in "international" cases, the funds being used to promote the SUA can come from any source, including otherwise legitimate businesses, provided that the funds are moving to or from the

United States to promote the SUA. For example, if an individual runs a convenience store in Canada and all ostensibly legitimately derived funds from the store are wired to the United States to pay drug couriers operating in the United States, this constitutes money laundering under 18 U.S.C. § 1956.

A. 18 U.S.C. § 1956 (a)(1), Domestic transactions.

B. 18 U.S.C. § 1956 (a)(2), International transactions.

C. 18 U.S.C. § 1956 (a)(3), Sting operation.

D. 18 U.S.C. § 1956 (h), Money laundering conspiracy.

E. 18 U.S.C. § 1957, Engaging in monetary transactions in property in excess of $10,000 derived from an SUA.

11.2 Specified Unlawful Activities Related to Commercial Trade Fraud

A. 18 U.S.C. § 541, Entry of goods falsely classified.

B. 18 U.S.C. § 542, Entry of goods by means of false statements.

C. 18 U.S.C. § 545, Smuggling goods into the United States.

D. 18 U.S.C. § 554, Smuggling goods from the United States.

E. 18 U.S.C. § 2318, Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging.

F. 18 U.S.C. § 2319, Criminal infringement of a copyright.

G. 18 U.S.C. § 2319A, Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances.

H. 18 U.S.C. § 2320, Trafficking in counterfeit goods and services.

I. 18 U.S.C. § 2341-2346, Trafficking in contraband cigarettes.

J. 18 U.S.C. § 1341, Fraud and swindles (including mail fraud).

K. 18 U.S.C. § 1343, Fraud by wire, radio, or television.

(Note: *See* the Financial Investigations Handbook (HSI HB 14-03), dated May 13, 2014, or as updated, for more information.)

11.3 Forfeiture Laws

A. 18 U.S.C. § 981, Civil Forfeiture

Any property representing proceeds of violations of 18 U.S.C. § 1956, 1957, or 1960, as well as real property (such as houses), is subject to administrative or judicial forfeiture under this Section of Title 18. The procedural requirements for forfeiture are described under 18 U.S.C. § 983.

B. 18 U.S.C. § 982, Criminal Forfeiture

Criminal forfeiture is available upon conviction. Accordingly, to ensure that assets are forfeited to the United States should the indictment fail, SAs are strongly encouraged to pursue *in rem* civil forfeiture against the property itself. The criminal forfeiture law allows for the government to obtain a general judgment against a person and for substitution of assets if the property is not available. The procedural requirements for criminal forfeiture are described under 21 U.S.C. § 853.

C. 19 U.S.C. § 1595a(c) and (d), Customs Forfeiture Provisions

The use of Title 19 as the procedural basis for seizure and forfeiture is exempt from the provisions of CAFRA, such as the mandatory provision of notice within 60 days of seizure and the "innocent owner defense" under 18 U.S.C. § 983. Although notice must still be given in order not to violate constitutional due process protections, it must be given within a "reasonable" period of time. Note that 19 U.S.C. § 1595a *shall* be used for a number of commercial trade fraud violations, including for merchandise which is stolen, smuggled, or clandestinely introduced. The use of this statute also is permissive in a number of other commercial trade fraud cases, such as seizures and forfeitures for country of origin marking violations.

(Note: *See* the Asset Forfeiture Handbook (HSI HB 10-04), dated June 30, 2010, or as updated, for more information.)

11.4 Financial Investigative Methodology

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Chapter 12. CIVIL VIOLATIONS

Civil violations involve material false statements, acts, or omissions or importations made contrary to law for which a violator has some degree of culpability which may be lower than the willful, knowing, or fraudulent mental state required by the criminal customs fraud statutes under 18 U.S.C. § 541 *et seq*. Specifically, culpability may be found for civil violations where the actor was fraudulent, grossly negligent, or negligent, regardless of whether this action resulted in a LOR to the United States. *See generally* 19 U.S.C. § 1592.

12.1 Definitions of Fraud, Gross Negligence, and Negligence

A. Fraud. A violation is determined to be fraudulent if a material false statement, omission, or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence.

B. Gross Negligence. A violation is deemed to be grossly negligent if it results from an act or acts (or omissions) done with actual knowledge of, or wanton disregard for, the relevant facts and with indifference to, or disregard for, the offender's obligations under the statute.

C. Negligence. A violation is determined to be negligent if it results from an act or acts (or omissions) due to the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances either (a) in ascertaining the facts or in drawing inferences therefrom in ascertaining the offender's obligations under the law or (b) in communicating information in a manner so that it may be understood by the recipient. As a general rule, a violation is negligent if it results from failure to exercise reasonable care and competence (a) to ensure that statements made and information provided in connection with the importation of merchandise are complete and accurate or (b) to perform any material act required by statute or regulation.

12.2 19 U.S.C. § 1592, Penalties for Fraud, Gross Negligence, and Negligence

A violation of 19 U.S.C. § 1592 consists of:

A. Entering or introducing, or attempting to enter or introduce, merchandise by means of a document, electronically transmitted data or information, an oral or written statement, act, or omission which is material and false due to negligence, gross negligence, or fraud.

B. Aiding and abetting another person to engage in such activities.

The violation need not involve a LOR. However, the statute includes a provision for the recovery of any duties lost as a result of the violation, regardless of whether a penalty is assessed. *See* 19 U.S.C. § 1592(d).

12.3 19 U.S.C. § 1593a, Penalties for False Drawback Claims

19 U.S.C. § 1593a provides penalties for false drawback claims. Section 1593a provides that no person, by fraud or negligence, may seek, induce, or affect, or attempt to seek, induce, or affect the payment or credit to that person or others of any drawback claim by means of any document, written or oral statement, electronically transmitted data or information, any act which is material and false, or any omission which is material, or aid or abet any other person in any such violation.

12.4 19 U.S.C. § 1595a, Forfeiture and Other Penalties

19 U.S.C. § 1595a(b) provides that any person who directs or is in any way concerned in any actual or attempted importation of merchandise contrary to law is liable for a civil penalty equal to the value of the merchandise introduced or attempted to be introduced.

Under 19 U.S.C. § 1595a(a), every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate an importation contrary to law is subject to seizure and forfeiture together with any tackle, apparel, furniture, harness, or equipment attached. In general, this means that any item used to facilitate an importation contrary to law is subject to seizure and forfeiture under

Title 19 in the same manner as the actual merchandise imported contrary to law. For example, a domain name being used to advertise illicit transshipment services, and which is targeting customers in the United States, could be seized under 19 U.S.C. § 1595a(a) if such merchandise has a false country of origin classification upon introduction or entry.

As discussed in greater detail in Section 17.1 of this Handbook, merchandise imported contrary to law is also subject to seizure and forfeiture under the provisions of 19 U.S.C. § 1595a(c).

12.5 31 U.S.C. § 3729 *et seq*., False Claims (False Claims Act)

In commercial trade fraud investigations, SAs may frequently encounter issues with the FCA in connection with AD or CVD evasion investigations. Under the Continued Dumping and Subsidy Offset Act of 2000 (also known as the "Byrd Amendment"), domestic producers were eligible to receive a portion of the AD or CVD owed to the United States if they appeared on ITC's list of producers who are potentially eligible to receive Byrd Amendment distributions. The domestic producer must have been a petitioner or an interested party in support of a petition that resulted in the AD/CVD Order being imposed and must remain in operation. After being found inconsistent with the United States' obligations under the World Trade Organization Agreement, this legislation was repealed by Congress on December 21, 2005, and does not apply to any claims filed by domestic producers after October 1, 2007. Because "Byrd Money" is no longer widely available, domestic producers (and other parties in the United States alleging AD or CVD evasion) are now filing FCA civil suits under 31 U.S.C. § 3730 to obtain a portion of AD or CVD owed to the United States. DOJ's Civil Division may intervene in the action (a *qui tam* suit) and become the primary plaintiff; however, the party raising the initial claim (known as the

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(b) (7)(E) If violations supporting forfeiture are not identified in the settlement or court order, the funds will all go into the General Fund, rather than the Treasury Forfeiture Fund (TFF). This is especially important to consider in light of the U.S. Department of the Treasury's Executive Office for Asset Forfeiture's (TEOAF) policies regarding post-forfeiture asset sharing and TEOAF's responsibility for administering the TFF.

Outside of FCA cases involving domestic, private parties (as noted above under Chapter 9 of this Handbook), the government also can attempt to recover taxes and duties owed and other damages incurred under 31 U.S.C. § 3729(a)(1)(G). The amount of an FCA penalty, which is issued by the court, is between $5,500 and $11,000 plus treble damages equal to three times the amount of damage the United States has sustained because of the act of the party who has knowingly made, used, or caused another to make or use a false statement or record material to his or her obligation to transmit money to the United States or decrease a monetary obligation to the United States. Note that the treble damages available under the FCA are sometimes more than the maximum amount which could be assessed for findings of negligence (two times the duties owed) under 19 U.S.C. § 1592 but may be less than the maximum amount for gross

negligence (four times duties owed) or fraud (domestic value of the merchandise). Note also that, unlike 19 U.S.C. § 1592 penalties, the FCA cannot be used unless there is a LOR, as the FCA requires that the government prove that the false statement or omission was made for purposes of decreasing an obligation to pay money owed to the government; 19 U.S.C. § 1592(c) has provisions for the assessment of penalties when there has been no LOR to the United States – up to the full domestic value of the merchandise for fraud, up to 40% of dutiable value for gross negligence, and up to 20% of dutiable value for negligence.

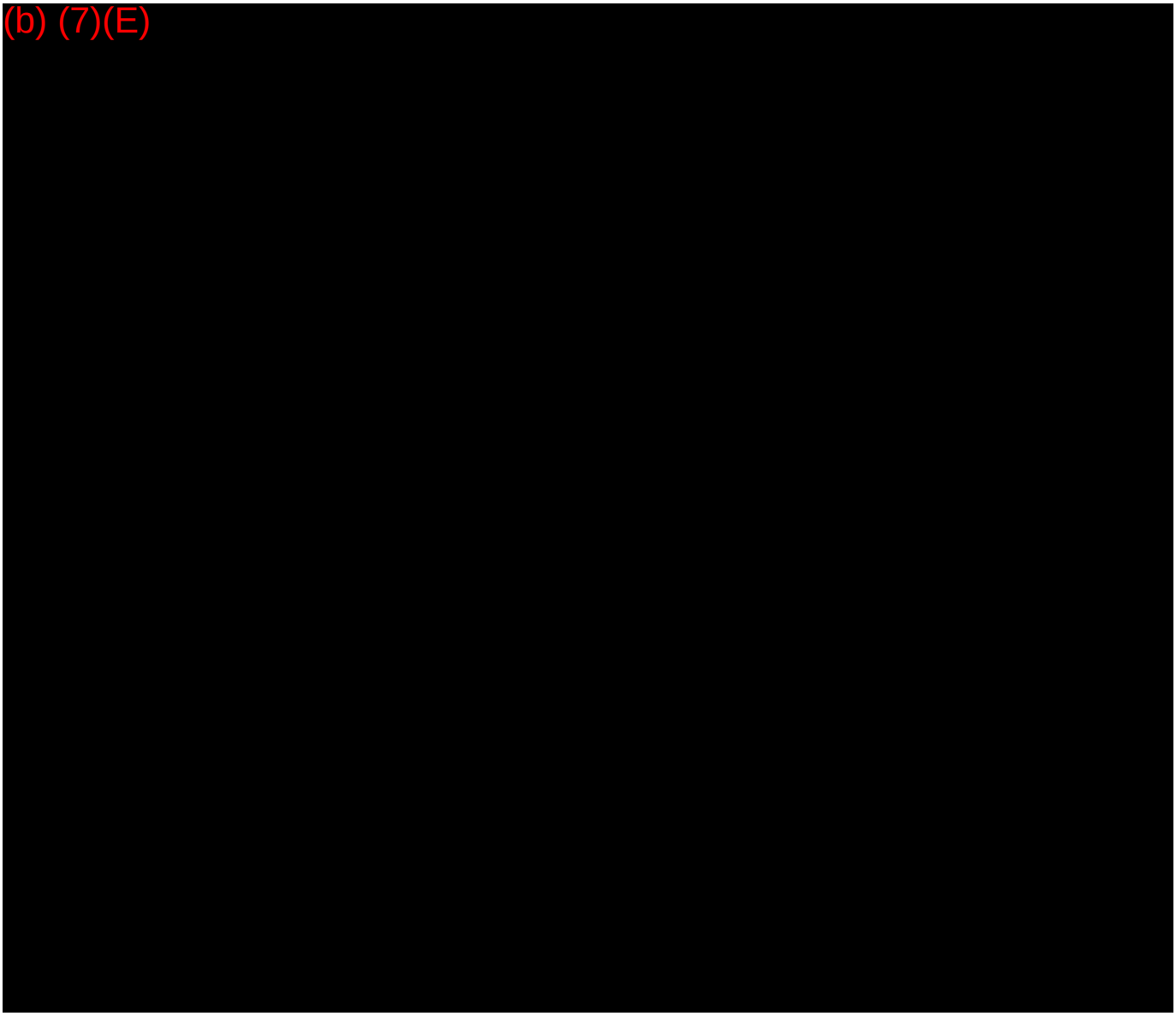
Chapter 13. RELATIONSHIP BETWEEN CRIMINAL AND CIVIL VIOLATIONS

The basic elements of criminal and civil violations may, in some cases, be the same: false statements, acts, or omissions for which the violator is both responsible and culpable. Criminal and civil frauds chiefly differ in the higher degree of culpability and the higher overall burden of proof at trial required in criminal cases. Thus, a criminal trade fraud violation may encompass all the elements of a related civil fraud violation. The same evidence used to establish the criminal violation may therefore also establish the civil violation. Commercial trade fraud investigations must therefore be conducted in a manner which, while chiefly focusing on proving criminal violations, preserves the government's ability to pursue civil remedies, such as CBP's FP&F process. (b) (7)(E) [redacted].

(b) (7)(E) [redacted].

13.1 Grand Jury Subpoenas

Rule 6(e) of the Federal Rules of Criminal Procedure generally restricts the use of evidence obtained pursuant to grand jury proceedings for the purpose of criminal prosecutorial actions. Unlawful disclosure, use, or attempted use of grand jury material for any purpose other than assisting the U.S. Attorney in the enforcement of federal criminal laws is prohibited. Grand jury materials become available for use by HSI and CBP in civil proceedings only after those materials become a matter of public record, either by embodiment in a criminal indictment, information, plea agreement, or at trial, or when otherwise ordered disclosed by the court. Grand Jury subpoenas should be used in requests for financial information, as there is a lower risk of



13.2 Administrative Summonses and Subpoenas

HSI SAs have statutory authority to summon persons to give testimony and subpoena the production of documents in four defined categories:

A. DHS Form 3115, Summons (commonly referred to as a "Customs Summons")—The Customs Summons derives its authority from 19 U.S.C. § 1509(a)(2) and is the most common type of authority exercised in commercial trade fraud investigations.

B. DHS Form I-138, Immigration Enforcement Subpoena—The Immigration Enforcement Subpoena derives its authority from 8 U.S.C. § 1225(d) and pertains to the enforcement of U.S. immigration laws.

C. ICE Form 73-021, Controlled Substances Enforcement Subpoena—The Controlled Substances Enforcement Subpoena is authorized by 21 U.S.C. § 967 and is to be used to enforce 18 U.S.C. § 545 with respect to any controlled substance.

D. ICE Form 73-022, Export Enforcement Subpoena—The Export Enforcement Subpoena derives its authority from 50 U.S.C. § 4614(a)(1) and 22 U.S.C. § 2778 and pertains to the enforcement of the AECA and the Export Administration Act.

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Chapter 14. SOURCES OF INFORMATION

14.1 Sources of Information within ICE

A. Office of the Principal Legal Advisor

OPLA is composed of attorneys located at Headquarters (HQ) as well as attorneys located at OCCs in field locations. The OPLA HQ Section responsible for advising HSI HQ regarding commercial trade fraud investigations is the Criminal Law Section. OPLA attorneys embedded within HSI's SAC Offices are available to provide field legal advice and guidance to SAs throughout any commercial trade fraud investigation. When a significant investigation involving entry by false documents, statements, or practices is opened, the case agent is strongly encouraged to consult with the local OPLA embedded attorney to obtain legal advice on relevant legal issues such as the statute of limitations, materiality, and the potential level of

culpability of violations. At major stages during commercial trade fraud investigations (e.g., execution of warrants, interviewing of significant witnesses, sample indictment drafting, and referral of a case to the U.S. Attorney), the case agent should consult with the local OPLA embedded attorney in order to ensure legal compliance. The case agent may also request that a local OPLA embedded attorney accompany the case agent when a significant case is presented to the U.S. Attorney for criminal prosecution. This will allow the local OPLA embedded attorney to support the case agent's presentation and answer any questions that may arise concerning the application of specific customs laws to the case.

B. Cyber Crimes Center (C3)

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C. Trade Transparency Unit (TTU)

TTU leads HSI's effort to target TBML activities. TTU has negotiated the exchange of trade data with numerous foreign governments in order to increase trade transparency between trading partner countries. (b) (7)(E)

(b) (7)(E)

(b) (7)(E) (Note: See the Financial Investigations Handbook (HSI HB 14-03), dated May 13, 2014, or as updated, and contact TTU on gaining access to, and training on, DARTTS.) In addition, certain foreign governments have TTU-vetted units to assist HSI with international cases.

D. HSI International Operations

HSI International Operations and the Attaché Offices provide critical support to commercial trade fraud investigations since they typically have a significant nexus to foreign countries. (b) (7)(E)

(b) (7)(E)

E. HSI Forensic Laboratory (HSI-FL)

HSI-FL specializes in the scientific authentication and research of travel and identity documents and related issues. (b) (7)(E)

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F. National Cyber Forensics Training Alliance (NCFTA)

NCFTA is classified as a tax-exempt nonprofit organization under Internal Revenue Code 501(c)(3). NCFTA provides a neutral venue where members of law enforcement, private industry, and academia can monitor, track, and respond to current and emerging cybercrime threats. (b) (7)(E)

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G. National Targeting Center – Investigations (NTC-I)

NTC-I is a CBP and HSI collaborative effort to enhance the partnership with the existing CBP equities (NTC-Passenger and NTC-C) and HSI's TTU. (b) (7)(E)

(b) (7)(E)

H. Trade Enforcement Coordination Centers (TECCs)

TECCs are joint HSI and CBP collaborative centers whose mission is to enhance communication and coordinate efforts to disrupt and dismantle criminal organizations. (b) (7)(E)

(b) (7)(E)

I. IPR Center

The IPR Center provides support and analysis to ongoing commercial trade fraud investigations. (b) (7)(E)

(b) (7)(E)

14.2 Sources of Information within CBP

A. Office of Field Operations (OFO)

1) OFO Field Offices

OFO oversees Field Operations Offices in the United States that provide centralized management oversight and operational assistance to U.S. POEs and pre-clearance offices. (b) (7)(E)

(b) (7)(E)

2) National Targeting Center – Cargo (NTC-C)

NTC-C is a state-of-the-art operations center that proactively targets and coordinates examinations of high-risk cargo, (b) (7)(E) (b) (7)(E) targeting and analysis.

B. Office of Trade (OT)

OT coordinates enforcement and compliance efforts involving commercial trade enforcement priorities. (b) (7)(E)

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C. Commercial Targeting and Analysis Center (CTAC)

CTAC is a CBP facility designed to streamline and enhance federal efforts to address import safety issues. (b) (7)(E)

D. Import Specialists

Import Specialists are responsible for reviewing entry summary documentation submitted by importers to ensure the appropriate classification and appraisement of merchandise, verifying compliance with all statutory and regulatory requirements, and assessing and collecting duties and fees owed on imported commodities. (b) (7)(E) [redacted]

Import Specialists typically specialize in one or more commodities covered by a given section of HTSUS. They have extensive contacts with importers, customs brokers, foreign shippers, and other parties involved in international trade. Import Specialists provide advice to importers and customs brokers on the classification and appraisement of merchandise and often meet with importers to discuss and resolve routine instances of noncompliance that occur in import transactions. (b) (7)(E) [redacted]

Additionally, as the CBP specialist responsible for the classification and appraisal of imported merchandise, Import Specialists complete Appraisal Worksheets in trade fraud investigations (b) (7)(E) [redacted]

E. National Import Specialists (NISs)

NISs work for CBP's OT, Regulations and Rulings (RR). NISs specialize in one or more commodities in a given section of HTSUS. They are responsible for issuing binding guidance to CBP Officers and importers on the proper classification and appraisement of merchandise. They also disseminate commodity information to Import Specialists to promote uniformity in the treatment of import transactions. Formal rulings issued by NISs are released to the trade communit (b) (7)(E) [redacted]

[redacted]

F. Entry Specialists

Entry Specialists at POEs review and process entry summary documentation that is not selected for Import Specialist review. [redacted]

G. CBP Officers

CBP Officers work for OFO and are responsible for examining merchandise upon its entry into the United States. [redacted]

H. Regulatory Auditors

RA is part of OT, with offices at various field locations. RA has general civil authority to conduct audits of individual and company importations under 19 U.S.C. § 1508, Recordkeeping; 19 U.S.C. § 1509, Examination of books and witnesses; and 19 U.S.C. § 1510, Judicial enforcement.

[redacted]

(b) (7)(E)

I. Fines, Penalties and Forfeitures Officers

FP&F Officers work for OFO and are located at various POEs. FP&F Officers are responsible for the effective management of seized property and for FP&F case processing. FP&F Officers determine whether a violation has occurred, issue notices of the violation, adjudicate petitions for relief, initiate forfeiture, and acknowledge waivers of the statute of limitations. FP&F Officers decide the level of culpability and the validity of prior disclosures in cases brought under 19 U.S.C. §§ 1592 and 1593a. FP&F Officers establish standards for case initiation, including the required FP&F case supporting documentation necessary to substantiate violations, and provide, arrange, or coordinate training for case initiators and their supervisors to ensure that they meet these standards.

J. CBP Laboratories

CBP has eight laboratories located in Los Angeles, San Francisco, Houston, Chicago, Savannah, New York, San Juan, and Springfield, Virginia. (b) (7)(E)

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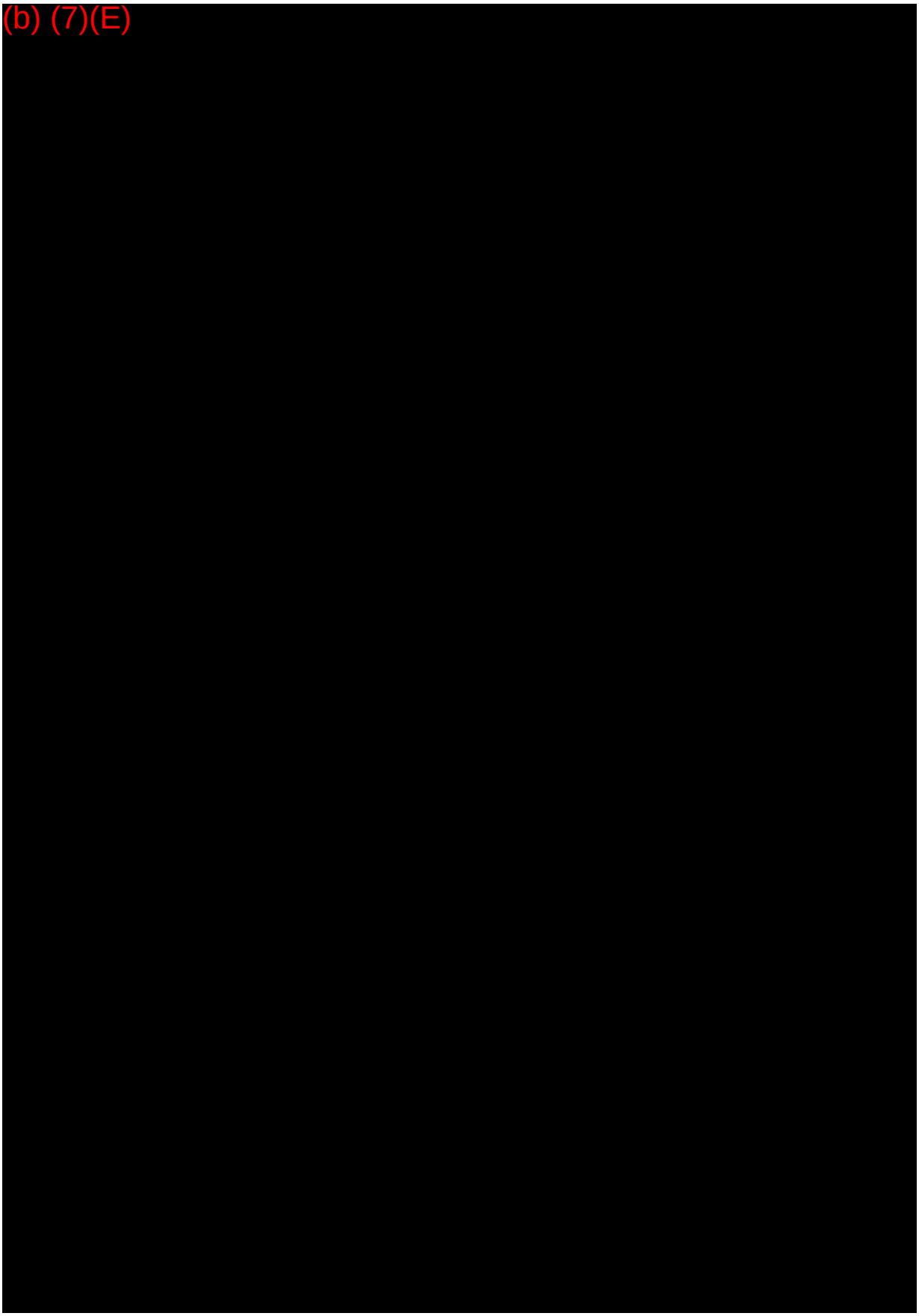

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K. Centers of Excellence and Expertise (CEEs)

CBP has developed industry integration centers, each focused on a designated industry and designed to increase uniformity of practices across POEs, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen CBP's knowledge of key industry practices. Ten CEEs are currently in place: 1) Electronics in Los Angeles; 2) Pharmaceutical, Health, and Chemicals in New York; 3) Automotive and Aerospace in Detroit; 4) Petroleum, Natural Gas, and Minerals in Houston; 5) Apparel, Footwear, and Textiles in San Francisco; 6) Machinery in Laredo; 7) Agriculture and Prepared Products in Miami; 8) Consumer Products and Mass Merchandising in Atlanta; 9) Base Metals in Chicago; and 10) Industrial and Manufacturing Materials in Buffalo. The CEEs are within CBP OFO. (Note: SAs may contact the IPR Center for CBP's CEE point of contact list.)

14.3 Computer Database Tools in CBP and ICE

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14.4 Outside Sources of Information

A. Confidential Informants

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B. Other Sources of Information

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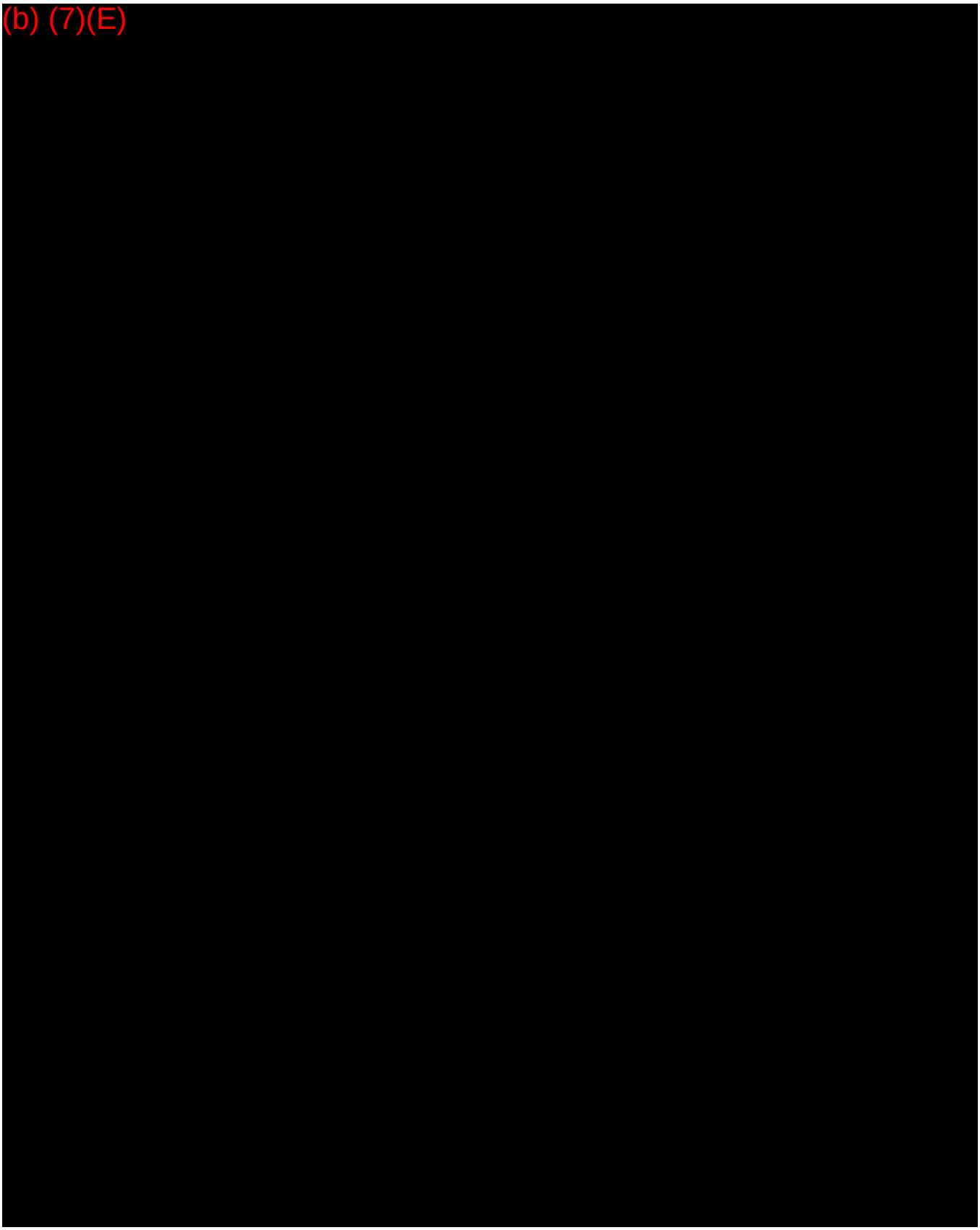

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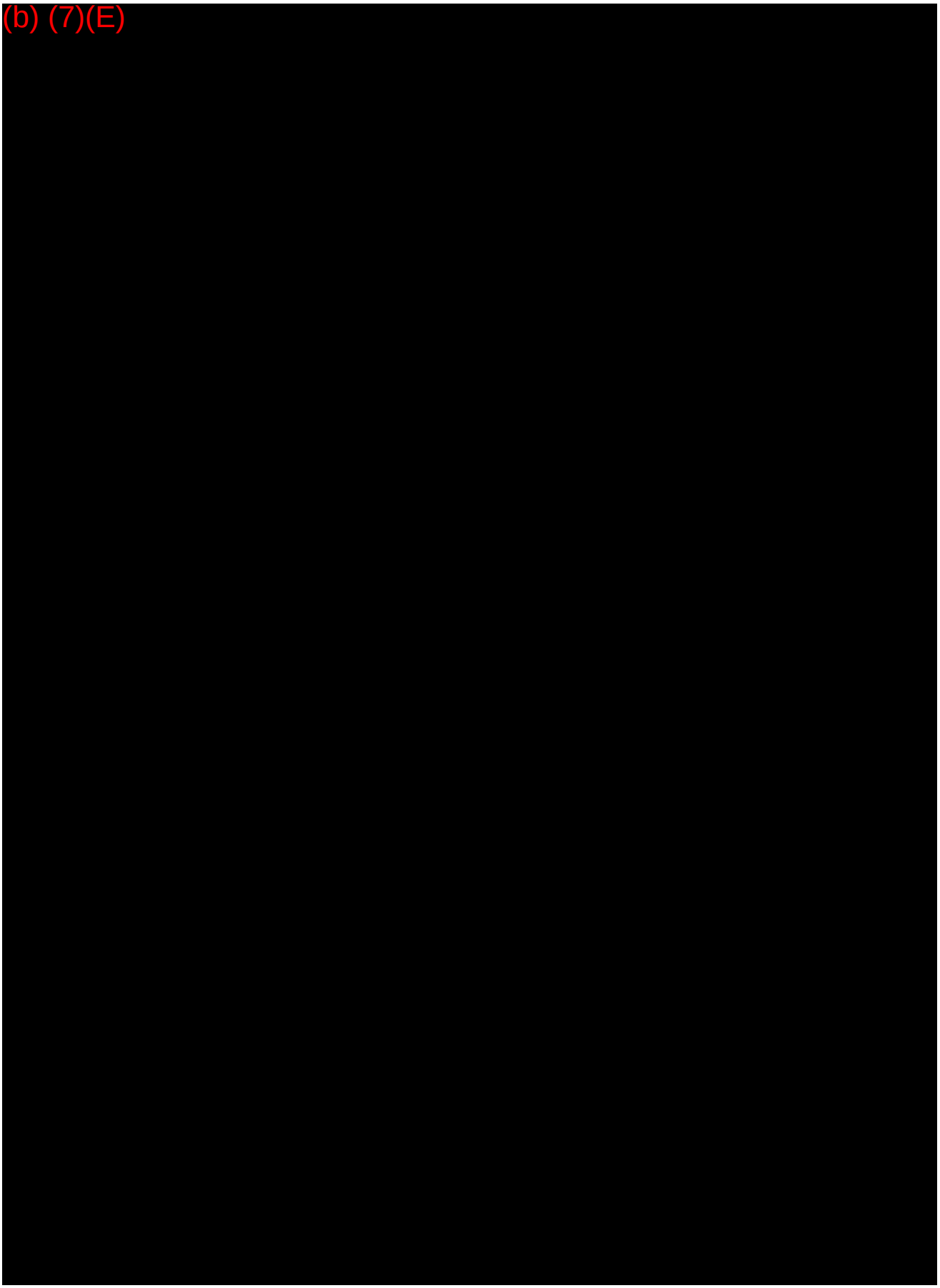


Chapter 15. INVESTIGATIVE METHODS IN COMMERCIAL TRADE FRAUD INVESTIGATIONS

15.1 Examination of Importation Records

Upon receiving an initial allegation of commercial trade fraud, SAs should identify, collect, and examine all import records on file with CBP, including entry records and full importation history. SAs may want to obtain records from the customs broker and freight forwarder on file for the IOR. However, SAs should weigh making initial contact with the customs broker during the early stage of an investigation so that the customs broker does not alert the IOR that he or she is under investigation.

SAs can utilize ACS or ACE/ITDS for full import history records and/or use (b) (7) which also provides access to the import records. (Note: *See* Section 14.3 for more information. SAs can work with CBP counterparts such as Entry Specialists, Import Specialists, Regulatory Auditors, and other CBP partners. *See also* Section 14.2, Sources of Information within CBP.)

15.2 Interviews

A. General

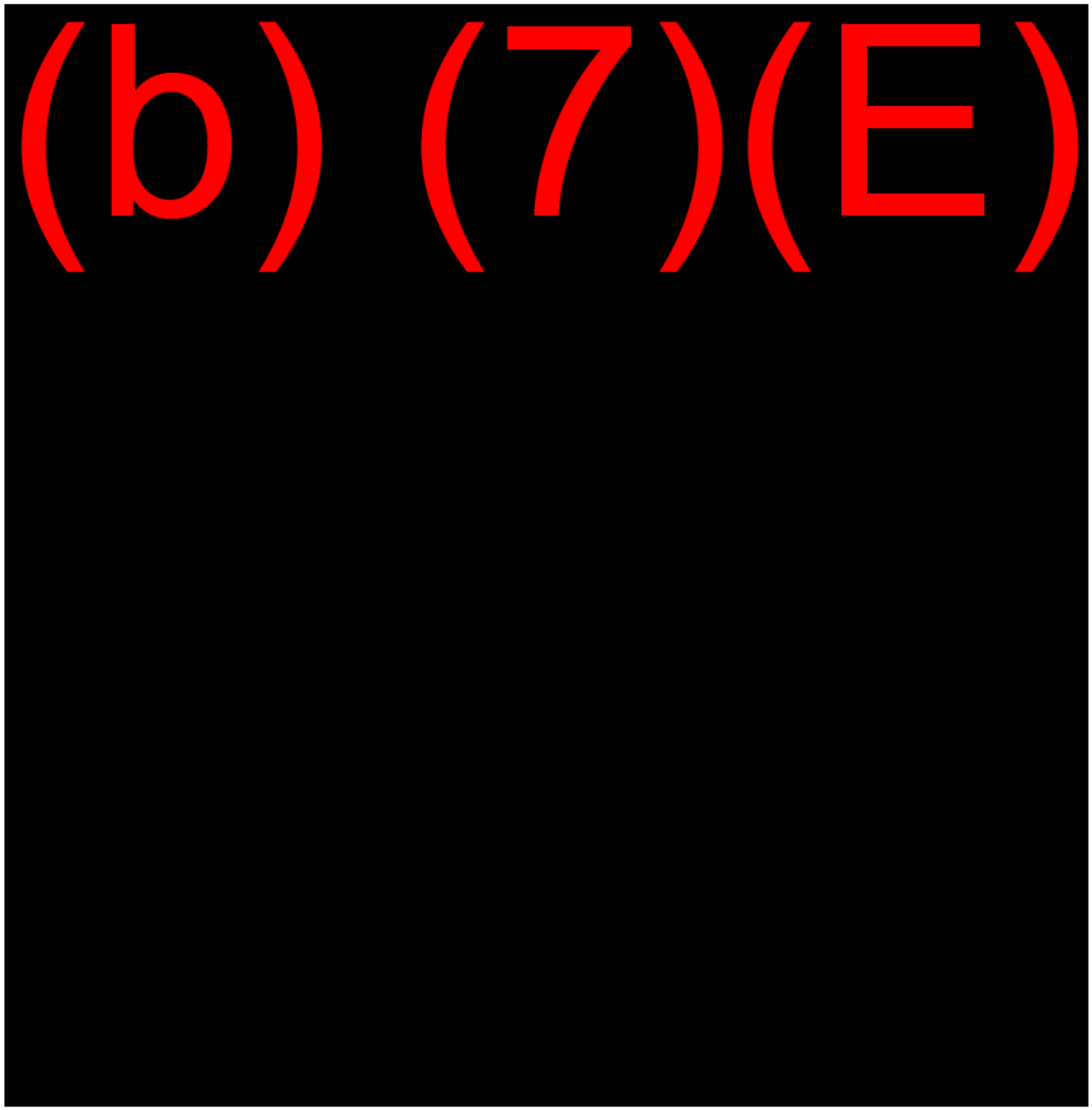
Interviews are generally the single most important part of any commercial trade fraud investigation. While documentary evidence may demonstrate the fact of the violation and its materiality, interviews of witnesses, (b) (7)(E) and suspects are often the principal means through which evidence of the violator's responsibility, motives, and culpability is obtained. All individuals involved in suspect transactions or who may have knowledge of the facts and circumstances of alleged violations should be identified and interviewed. Current and former employees of the importer, customs broker, or foreign supplier, as well as competitors and domestic purchasers of the imported product, may all have knowledge bearing on the fact of the violation, as well as on the suspect's responsibility and culpability. Witness interviews should focus on obtaining the testimonial evidence and all relevant supporting documents needed to prove the elements of the violation and the level of culpability involved. (Note: *See* the Interviewing Techniques Handbook (OI HB 10-03), dated April 28, 2010, or as updated.)

B. Compelling Testimony

SAs should always attempt to obtain voluntary statements from suspects and witnesses. (b) (7)(E) [redacted]

(b) (7)(E)

C. Records of Interviews



15.3 Examination of Records and Documents through a Summons or Subpoena

Upon reasonable notice, a customs officer may examine any record, statement, declaration, or other document which may be described with reasonable specificity and which is relevant to a

commercial trade fraud investigation. *See* 19 U.S.C. § 1509(a). This examination authority, in most instances, will be the basis for an SA's request for an importer, customs broker, or other party to voluntarily allow the SA to review and copy documents. "Reasonable notice" is determined by the facts and circumstances that exist at the time a request to examine documents is made. Records also include automated storage devices (e.g., servers, removable hard drives, Compact Disk Read-Only Memory (CD-ROMs)), and computer programs necessary to retrieve information in a usable form. *See* 19 C.F.R. § 163.1(a). Examinations under this section are not limited or restricted only to "import" records under 19 U.S.C. § 1508 and 19 C.F.R. § 163.1(a). The statute allows for the examination of any record or document that is relevant to an investigation for compliance with the customs laws of the United States. Requests to examine documents may be made by any customs officer electronically or in writing. There is no requirement that a specified period of time be given for the production of the requested records. The examination should be conducted in a mutually convenient place during normal business hours. Failure to give reasonable notice or to describe documents with reasonable specificity may be a valid reason for refusal to permit examination at the requested time. The validity of a refusal is determined by the totality of the circumstances involved. An SA can take the following actions if a party refuses to honor a valid request to examine records:

A. Certain records and information are required by law or regulation for the entry of merchandise. *See* 19 U.S.C. § 1509(a)(1)(A). CBP has published an extensive list of these records and information, known as the "(a)(1)(A) List." Records and information on the list include the information contained in the Entry Summary (CBP Form 7501), invoices, entry declarations, and powers of attorney. If a party who is required to maintain (a)(1)(A) records willfully fails to maintain, store, or retrieve those records, that party may be liable to penalties not to exceed $100,000. If a party who is required to maintain (a)(1)(A) records negligently fails to maintain, store, or retrieve those records, that party may be liable to penalties not to exceed $10,000. *See* 19 U.S.C. § 1509(g). It should be noted that these penalty provisions apply only to records identified on the (a)(1)(A) List.

B. There are no penalties provided for refusal to honor a request to produce records not identified on the (a)(1)(A) List. In such circumstances, SAs must use a search warrant, a 19 U.S.C. § 1509 Summons, a court order, or, as a last resort, a grand jury subpoena to obtain such records.

15.4 19 U.S.C. § 1509 Summons

The provisions of 19 U.S.C. § 1508 require certain persons to maintain certain records of their import transactions. Issuing a 19 U.S.C. § 1509 Summons is an administrative process authorized by 19 U.S.C. § 1509 by which SAs can compel persons to produce documents and give testimony in connection with investigations.

A. Persons Required to Keep Records

Any owner, importer, consignee, IOR, entry filer, or other party

1) who imports merchandise into the United States, files a drawback claim, or transports or stores merchandise carried or held under bond; or

2) who knowingly causes the importation, transportation, or storage of merchandise carried or held under bond into or from the United States; or

3) who is an agent of any party described above, including a customs broker; or

4) whose activities require the filing of a declaration or entry, or both

must make, keep, and render for examination any records which pertain to any such activity and are kept in the ordinary course of business. *See* 19 U.S.C. § 1508.

Also, any person who completes and signs a NAFTA Certificate of Origin for preferential treatment must make, keep, and render for examination all records related to the origin of the goods, including the Certificate of Origin and associated records. *See* 19 U.S.C. § 1508.

B. Records that Must Be Kept

Records that must be kept include documents normally kept in the ordinary course of business and which pertain to the activities listed in 19 C.F.R. § 163.1. Such records include statements, declarations, books, papers, correspondence, accounts, technical data, automated record storage devices (e.g., removable hard drives, tapes, CD-ROMs), computer programs necessary to retrieve information in a usable form, and other documents.

Additionally, NAFTA and other trade agreement "records" include other documents related to the origin of goods for which the trade agreement preference is claimed, including the Certificate of Origin and records associated with:

1) the purchase of, cost of, value of, and payment for the goods;

2) the purchase of, cost of, value of, and payment for all materials, including indirect materials, used in the production of the goods; and

3) the production of the goods.

Records required by 19 U.S.C. § 1508 must be retained for 5 years from the date of entry. Records related to drawback claims must be retained for 3 years from the date

of the claim. This provision does not preclude customs officers from seeking older records that are known to exist.

C. Persons Who May Be Summoned

SAs may summon, upon reasonable notice:

1) the person who imported, or knowingly caused to be imported, merchandise into the United States; or who exported, or knowingly caused to be exported, merchandise to a NAFTA country; or who transported or stored such merchandise, or knowingly caused such transportation or storage; or who filed a declaration, entry, or drawback claim with CBP;

2) any officer, employee, or agent of any such person described above;

3) any person having possession, custody, or care of records relating to the transaction; or

4) any other person deemed proper.

(Note: *See* 19 U.S.C. § 1509(a)(2).) A person who "knowingly caused" merchandise to be imported includes a person ordering merchandise from an importer if that person controlled the terms and conditions of the importation or furnished technical data, molds, equipment, other production assistance, material, components, or parts with the knowledge that they would be used in the manufacture or production of the imported merchandise. The 19 U.S.C. § 1509 Summons may be used to compel any person to give testimony under oath. A person summoned to give testimony is entitled to be represented by counsel. Testimony taken under oath will be transcribed. The person giving testimony may review the transcript to correct clerical and transcription errors; however, the person will not be permitted to strike portions of the transcript or make material changes in its content unless all parties agree to those changes. Customs officers shall provide a copy of the transcript to the person giving testimony; however, customs officers may withhold release of the transcript to the person if there is good cause to do so. *See* 5 U.S.C. § 555(c) and 19 C.F.R. § 163.7(d).

D. Records Which May Be Summoned

A 19 U.S.C. § 1509 Summons may require the production of any records required to be kept under the provisions of 19 U.S.C. § 1508 or for the purpose of ensuring compliance with U.S. customs laws. The summons must describe the records to be produced with reasonable specificity.

F. Who May Issue a Summons

HSI personnel at the rank of SAC or Attaché (or their equivalents) have been delegated the authority to issue the 19 U.S.C. § 1509 Summons. This authority may not be redelegated. (*See* OI Delegation Order 07-005 entitled, "Authority to Use the 19 U.S.C. § 1509 Summons Authority Within the Office of Investigations," dated July 16, 2007, or as updated.) Within CBP, the Commissioner or his or her designee

can issue a summons, although it cannot be delegated below the rank of Port Director or Field Director of RA. (*See* 19 C.F.R. § 163.7) Summonses may require the appearance of the summoned person and production of the summoned records before any customs officer. Normally, appearance and production will be before the case agent.

G. Service of Summonses

Any customs officer may serve a 19 U.S.C. § 1509 Summons. If the summons is directed to an individual, service must be made by personal delivery of the original summons (DHS Form 3115) to that person. If the summons is directed to a corporation, partnership, or association, service must be made by personal delivery of the original summons to an officer, managing or general agent, or any other agent authorized by the corporation, partnership, or association to receive the service of process; or by certified or registered mail. State incorporation documents usually give the name and address of the corporation's registered agent for this purpose.

Foreign corporations which serve as IORs for customs purposes must have a resident agent in the state where the POE is located. In the case of an entry filed from a remote location, the resident agent must be authorized to accept service of process against that corporation either in the State where the POE is located or in the State from which the remote location filing originate; the corporation must have filed a bond on CBP Form 301, Customs Bond. *See* 19 C.F.R. § 141.18. The foreign corporation's power of attorney for its U.S. customs broker will frequently contain a clause making the broker the registered agent for this purpose. In such circumstances, service of a summons directed to the foreign corporation may be made on the customs broker. The third-party recordkeeper provisions do not apply in this instance since the summons is for the production of the IOR's files, not the files maintained by the broker as a third-party recordkeeper.

A summons may not require the summoned person to appear at a place more than 100 miles from where that person was served with the summons. For example, customs officers cannot serve a summons on a person in New York that requires that person to appear in Los Angeles. *See* 19 U.S.C. § 1509(a)(2), 19 C.F.R. § 163.7(b)(ii).

Proof of service will be recorded by the serving customs officer by completion of block A, "Certificate of Service of Summons," on the second page of the Summons Form (DHS Form 3115). The party accepting service of the summons should complete block B, "Acknowledgment of Receipt," of DHS Form 3115. If third-party recordkeeper procedures apply to the Summons, notice must be given by providing a copy of the Summons (DHS Form 3115) and the Summons Notice (DHS Form 3115A) to the third party. The serving customs officer must record the giving of this Notice by completing block A, "Certificate of Service of Notice," of the second page of the Summons (DHS Form 3115).

H. Failure to Comply with a Summons

Whenever a person does not comply with a summons, SAs may ask the appropriate U.S. Attorney's Office to seek an order requiring compliance from the federal district court for the district in which the person resides or does business. If the third-party recordkeeper provisions apply to the summons, the third party may intervene in any proceeding before the court to judicially enforce the summons. If a summoned party fails to comply with a court order enforcing the summons, the court may find that party in contempt. In such instances, as long as the party remains in contempt, CBP, with the approval of the Secretary of Homeland Security, may prohibit the importation or withhold delivery of merchandise by that party, directly or indirectly, or for that party's account. If the party remains in contempt for more than one year, CBP may sell any such property at auction. *See* 19 U.S.C. § 1510. SAs should refer any failure to comply with a summons to the local OCC for action.

A person who willfully fails to maintain, store, or retrieve (a)(1)(A) List records may be subject to a penalty not to exceed $100,000 or an amount equal to 75 percent of the appraised value of the imported merchandise, whichever is less. *See* 19 U.S.C. § 1509(g)(2)(A). A person who negligently fails to maintain, store, or retrieve (a)(1)(A) List records may be subject to a penalty not to exceed $10,000 or an amount equal to 40 percent of the appraised value of the imported merchandise, whichever is less. *See* 19 U.S.C. § 1509(g)(2)(B). If a summons requires the production of (a)(1)(A) List records, failure to comply with the summons may subject the summoned party to these penalties. SAs should coordinate with CBP FP&F if the issuance of penalties for failure to comply with a summons is contemplated. Such penalties would be issued through CBP FP&F and are in addition to any proceedings to judicially enforce compliance with the summons. These penalties may not be assessed if penalties are also imposed under the provisions of 19 U.S.C. § 1592 for a material omission of the demanded information, or if disciplinary action is taken against a customs broker under the provisions of 19 U.S.C. § 1641.

15.5 Grand Jury Subpoenas and Investigative Grand Juries

(b) (7)(E)

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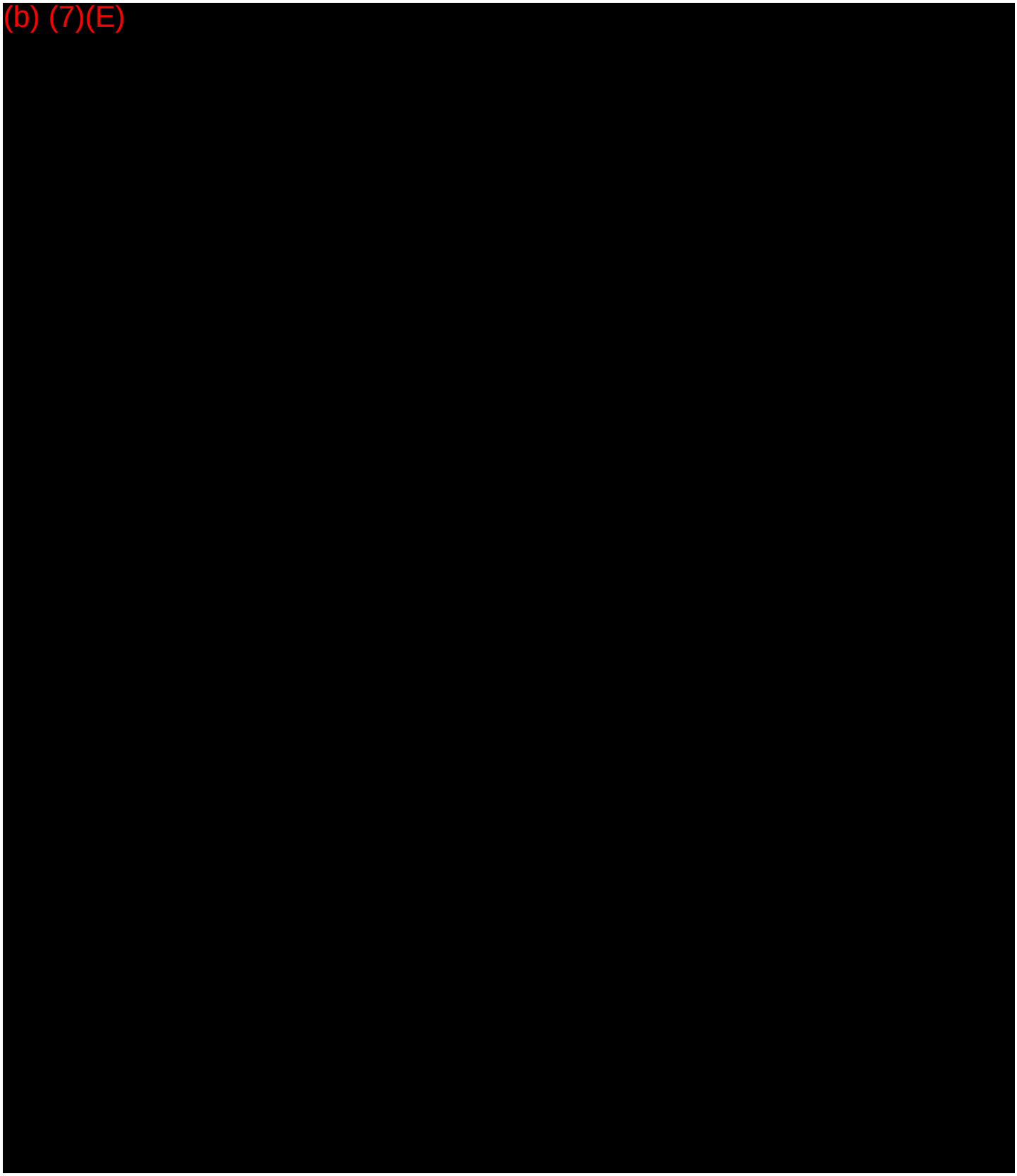
15.6 Search Warrants

(b) (7)(E)



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15.7 (b) (7)(E)

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15.8 (b) (7)(E)

(b) (7)(E)

[redacted]

(b) (7)(E)

15.9 (b) (7)(E)

(b) (7)(E)

15.10 Surveillance

Surveillance can be useful as a means of gaining general background and intelligence information on the business habits and relationships of suspects. Surveillance should be used whenever it is likely to result in obtaining evidence to prove the elements of the offense being investigated.

15.11 (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

15.12 Forensic Analysis

(b) (7)(E)

15.13 Assistance from International Operations

International Operations can facilitate MLATs to obtain foreign evidence for use in U.S. trial proceedings, as well as assist with summonses and subpoenas through host governments.

(b) (7)(E)

Chapter 16. COORDINATING COMMERCIAL TRADE FRAUD INVESTIGATIONS

16.1 Referrals for Investigation

Referrals of potential commercial violations may be received from many sources, including HSI employees, CBP Officers, Import Specialists, and Regulatory Auditors. SAs should develop and maintain contacts with CBP Officers involved in the processing of imported merchandise and entry documentation to encourage the early identification and prompt reporting of suspected

commercial violations to HSI. The manner and routing of referrals for investigation will vary based on circumstances and local procedures. Referrals may be received via telephone or email or in personal meetings with referring officers.

(b) (7)(E)

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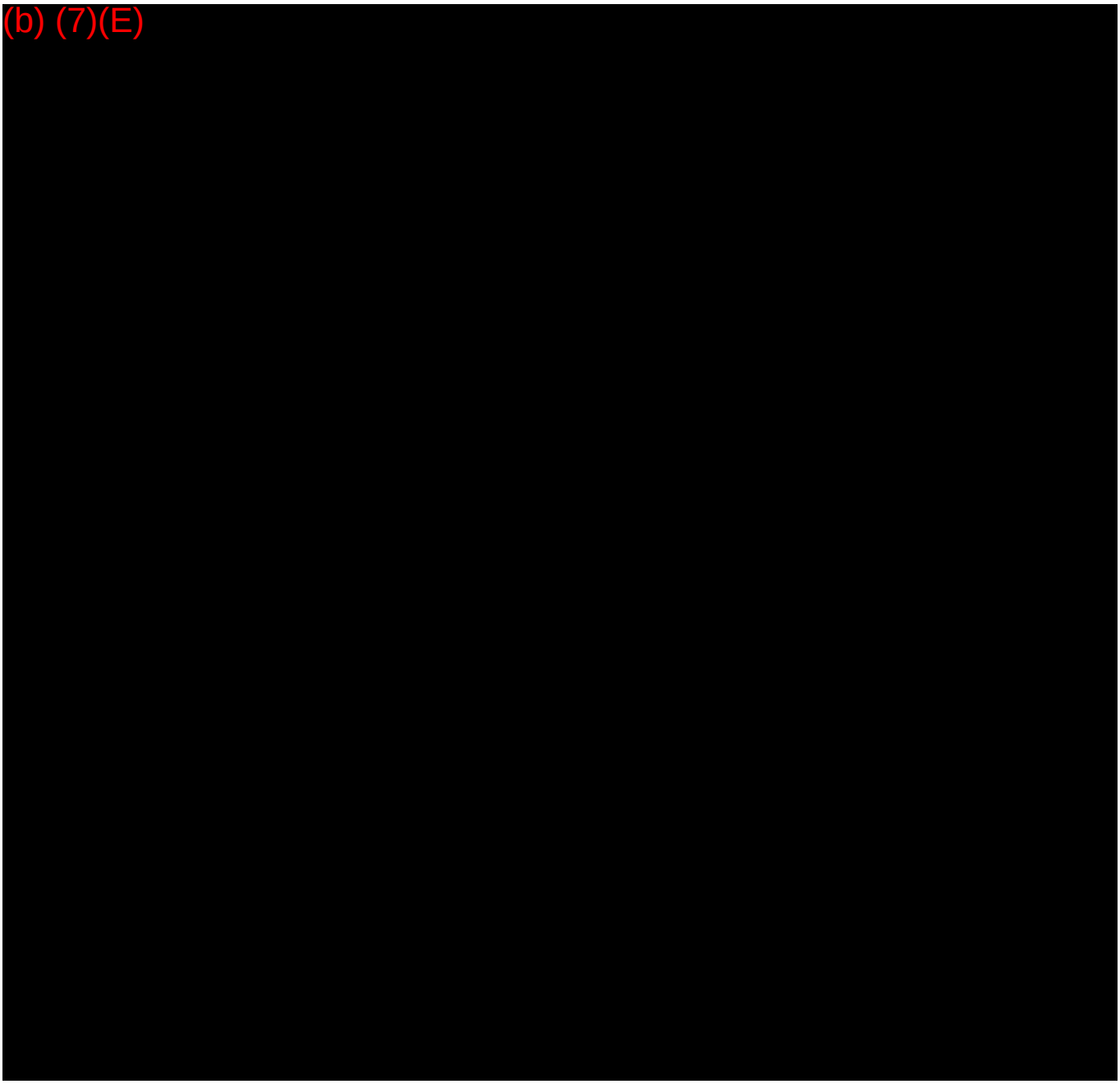
16.2 CBP Action on Declined Referrals

In instances where HSI declines to open an investigation based on a referral generated by a CBP Officer, Import Specialist, or other CBP employee, the CBP Port Director or CEE Director may assign an Import Specialist to make further inquiries and develop additional information to serve as the basis for a referral to FP&F for the issuance of a civil penalty. The development and administrative processing of the case includes preparing and opening a Commercial Operations Memorandum of Information Received (COMOIR) and preparing and/or reviewing and/or compiling all relevant documents, including the involved entry summaries, reports of importer premises and customs brokers visits, the Appraisal Worksheet, and the referral to FP&F.

(b) (7)(E)

16.3 Processing of Entries

(b) (7)(E)



Chapter 17. SEIZURE AND DETENTION OF MERCHANDISE

17.1 Seizures Under 19 U.S.C. § 1595a

The provisions of 19 U.S.C. § 1595a(c)(1) require the seizure and forfeiture of merchandise imported or attempted to be imported contrary to law – including merchandise which is stolen, smuggled, or clandestinely introduced, and "contraband articles" as defined under 49 U.S.C. § 80302 (this definition includes counterfeit merchandise and pirated works in violation of 18 U.S.C. §§ 2318, 2319, 2319A, and 2320). Similarly, 19 U.S.C. § 1595a(c)(2) contains

provisions indicating that customs officers *may* seize and seek forfeiture for, among other things, criminal trademark and copyright violations, mismarked country of origin, or restrictions on health, safety, or conservation. (b) (7)(E) [redacted].

This statute also includes provisions permitting the seizure of any vessel, vehicle, animal, aircraft, or other thing used to facilitate an importation contrary to law (or to transport the merchandise following its introduction). It also includes provisions for the assessment of penalties by CBP FP&F on any person who aids or abets an unlawful importation. *See* 19 U.S.C. § 1595a(a) and (b).

(b) (7)(E) [redacted]

17.2 Seizures for Violations of 19 U.S.C. § 1592

Under 19 U.S.C. § 1592(c)(14), merchandise imported as a result of a violation of the statute (i.e., merchandise imported as a result of a material false statement, omission, or act, or through negligence, gross negligence, or fraud) may be seized in limited circumstances (e.g., the violator is insolvent or beyond the jurisdiction of the United States or to prevent the introduction of prohibited or restricted goods). (b) (7)(E) [redacted]

17.3 Seizures for Violations of 18 U.S.C. §§ 542 and 545

Property which constitutes or is derived from proceeds traceable to violations of these provisions (when such violations are SUAs for money laundering violations) is subject to civil or criminal forfeiture under 18 U.S.C. §§ 981 and 982. (b) (7)(E) [redacted]

(b) (7)(E)

[redacted]

17.4 Seizures Pursuant to Search Warrants; Single- and Dual-Status Evidence

Search warrants may be used in commercial trade fraud investigations to search for and seize documentary and physical evidence of violations, as well as merchandise, including currency and other monetary instruments, which may be subject to forfeiture by the U.S. Government, including under the provisions of 19 U.S.C. § 1595a and 18 U.S.C. § 981.

Documentary, physical, and other evidence seized, purchased, or otherwise acquired by SAs that is not subject to forfeiture is known as "single-status evidence," i.e., such articles have only evidentiary status. Upon completion of all investigative, prosecutorial, and penalty action, those articles will be returned to their rightful owner.

Documentary, physical, and other evidence seized, purchased, or otherwise acquired by SAs that is subject to forfeiture is known as "dual-status evidence," i.e., such articles have dual status as both evidence and as property in which the U.S. Government has forfeiture interest. Either during or at the conclusion of all investigative, prosecution, and penalty action, the U.S. Government will institute proceedings to forfeit those articles.

CAFRA contains comprehensive amendments to federal forfeiture law. It has provisions that exempt Title 19-based seizures from the application of most of these reforms. CAFRA applies to all civil forfeitures *except* those proceedings pursued under Title 19; Title 26 (Internal Revenue Code of 1986); Title 21, Chapter 9 (the Federal Food, Drug, and Cosmetic Act); 50 U.S.C. § 4301 *et seq.* (Trading with the Enemy Act); and 22 U.S.C. § 401 (Illegal Exportation of War Materials).

17.5 Detention of Imported Merchandise

In many instances, CBP cannot make an immediate determination as to whether the merchandise is admissible at the time it is presented for examination and release. This is particularly true in instances where there is a question as to the true nature of the imported articles (such as chemicals which may be hazardous wastes), or where the merchandise may be subject to quotas but lacks the necessary visa documents. In some instances, an SA may ask the examining CBP Officer to place an "investigative hold" on merchandise to allow the SA to examine imported goods or to prepare for a controlled delivery. Under the provisions of 19 U.S.C. § 1499, within 5 working days following the date on which merchandise is presented for examination, CBP must decide if it will release or detain the merchandise. Merchandise not released within this 5-day period will be considered detained.

When merchandise is detained, unless it is held as evidence of a criminal violation, CBP must, within 5 working days following the date on which merchandise is presented for examination, issue a notice to the importer or other interested party, such as the customs broker, that the merchandise has been detained. The notice must state the specific reason for the detention, the anticipated length of the detention, the nature of tests or inquiries to be conducted, and the nature of any information which, if supplied to CBP, may accelerate the disposition of the detention.

If CBP fails to make a final determination with respect to admissibility within 30 days of the date on which the merchandise was presented for examination and release, that failure will be treated as a decision to exclude the merchandise from entry into the United States. The importer may file a protest of that decision. If CBP denies that protest, the importer may file suit in the CIT.

These procedures do not apply where the determination as to admissibility rests with another federal agency nor do they apply to trademark/copyright detentions covered by 19 C.F.R. § 133.

Chapter 18. REPORTING THE INVESTIGATION

18.1 Criminal Referrals: Criminal Syllabus Report

The ICM-generated criminal syllabus report is highly recommended for referring commercial trade fraud investigations to local U.S. Attorneys for the initiation of criminal prosecution. Criminal syllabus reports for commercial trade fraud investigations should provide an overview of the alleged violation, the full identity of the alleged violators, citation of the criminal statutes believed to have been violated, a discussion of the statutory and/or regulatory obligation or prohibition involved, an explanation of the HSI and CBP procedures involved, details of the testimonial and documentary evidence available to prove the elements of the violation, and the identity of the witnesses available for grand jury and trial testimony.

Each HSI office should, in consultation with its local U.S. Attorney's Office, determine the style, format, and procedures to be used for its criminal syllabus reports. SAs are encouraged to supplement the criminal syllabus with any other materials which may assist the U.S. Attorney in understanding and evaluating the case, such as timelines, link analysis diagrams, charts, graphs, etc. Additionally, the SA should make a formal oral presentation of the case to the AUSA to fully explain the violations involved and the evidence that establishes that criminal violations have occurred. Copies of any criminal syllabus reports forwarded to the U.S. Attorney should also be provided to the local OCC.

18.2 Civil Referrals: Penalty Report of Investigation

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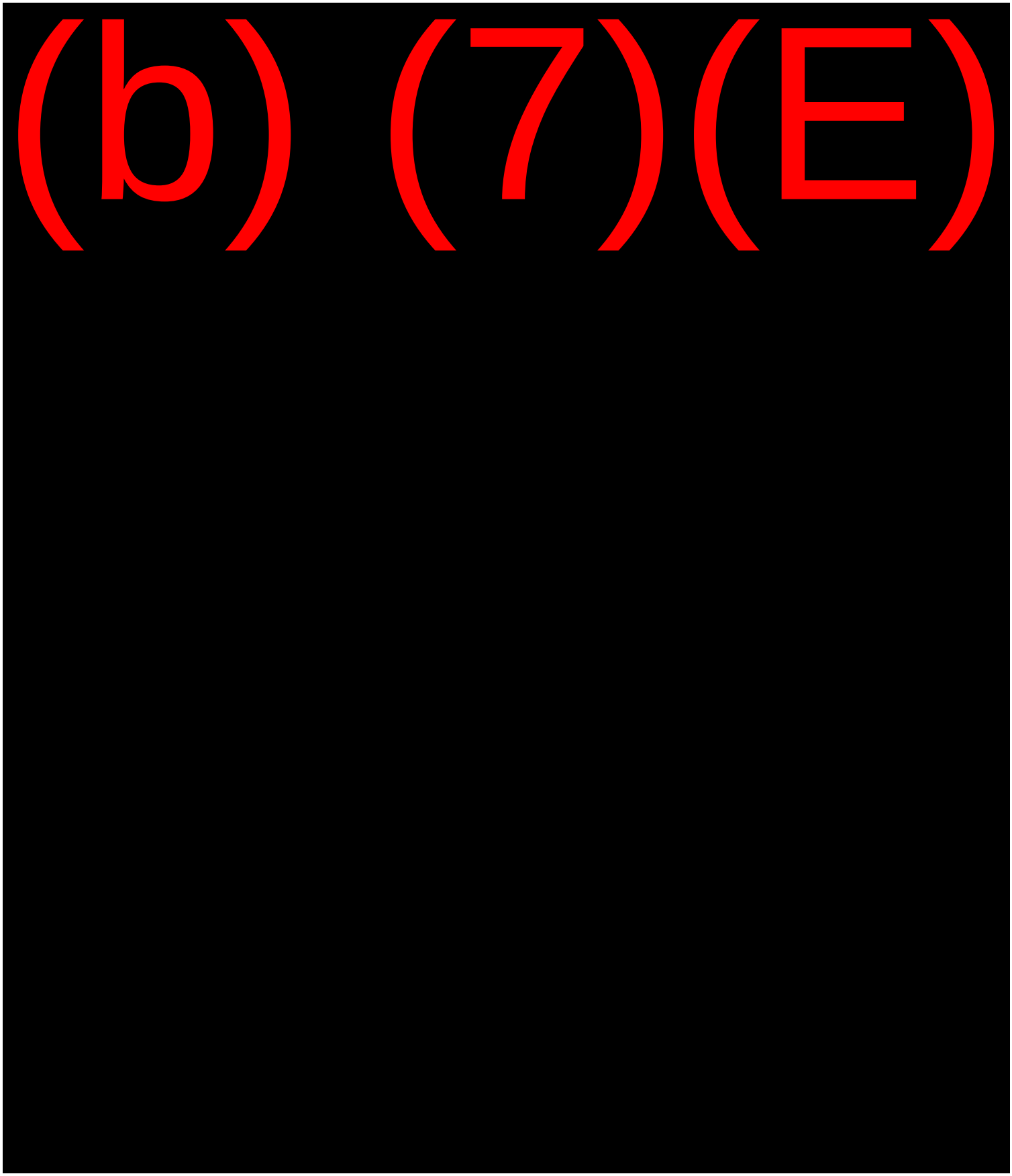
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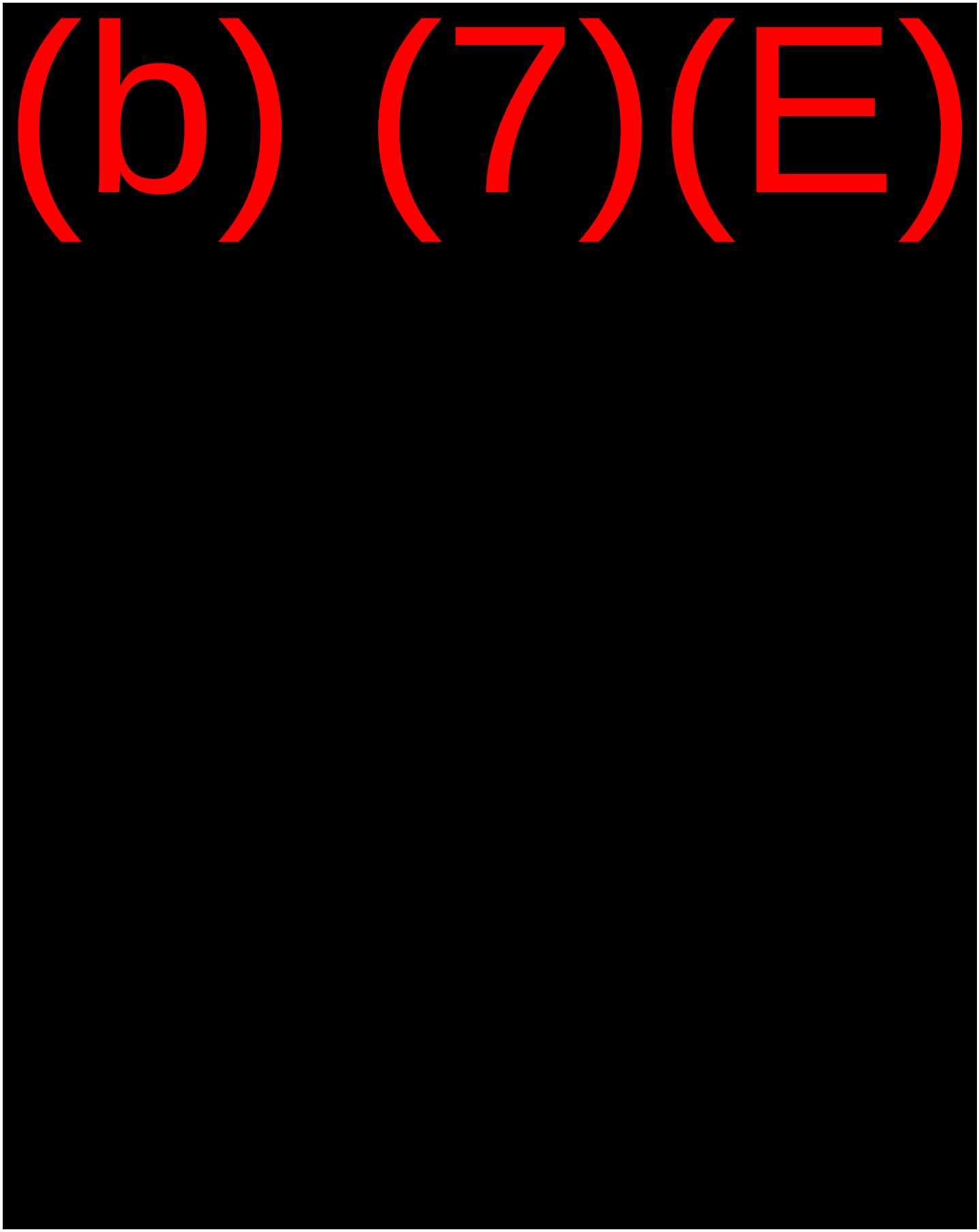
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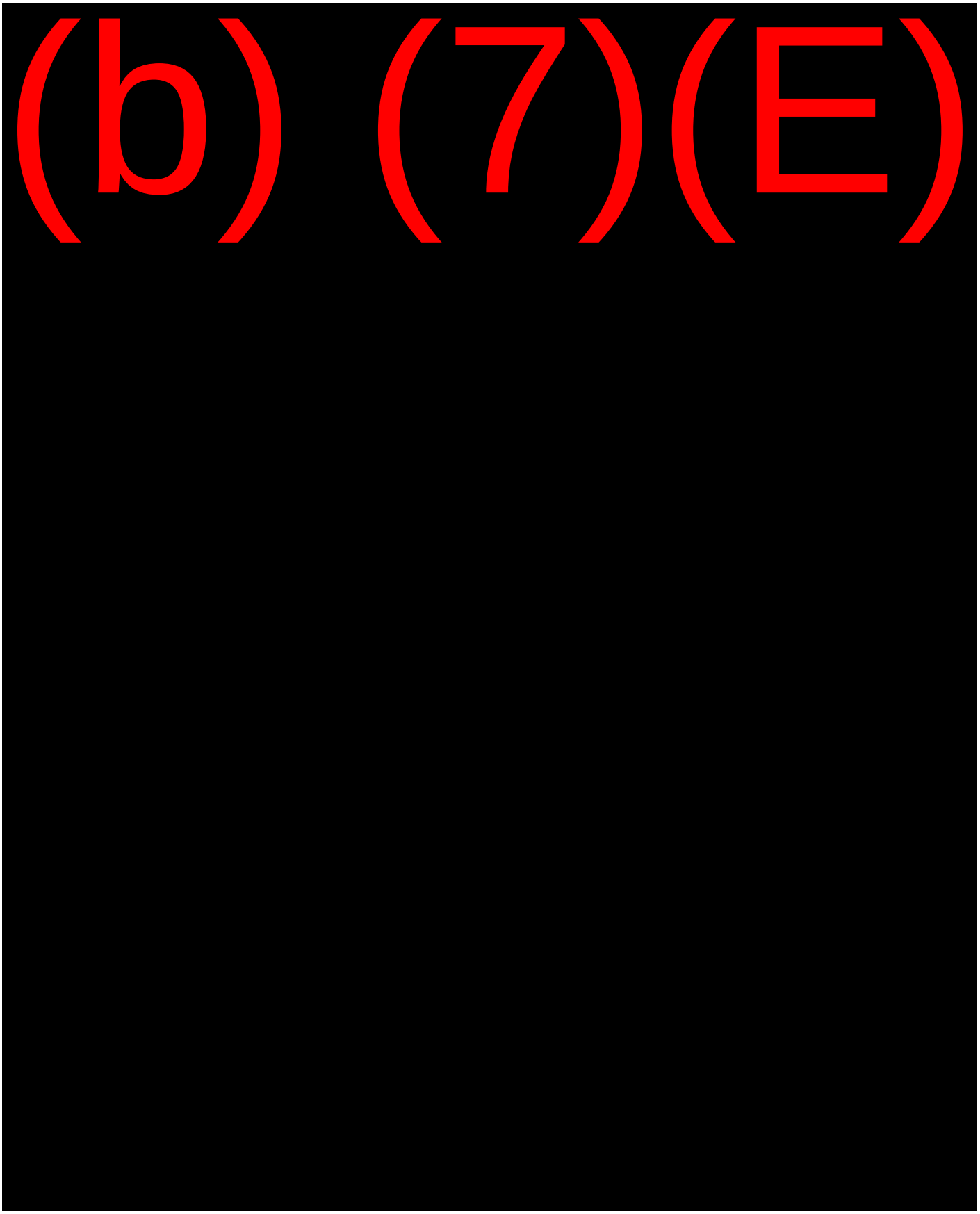
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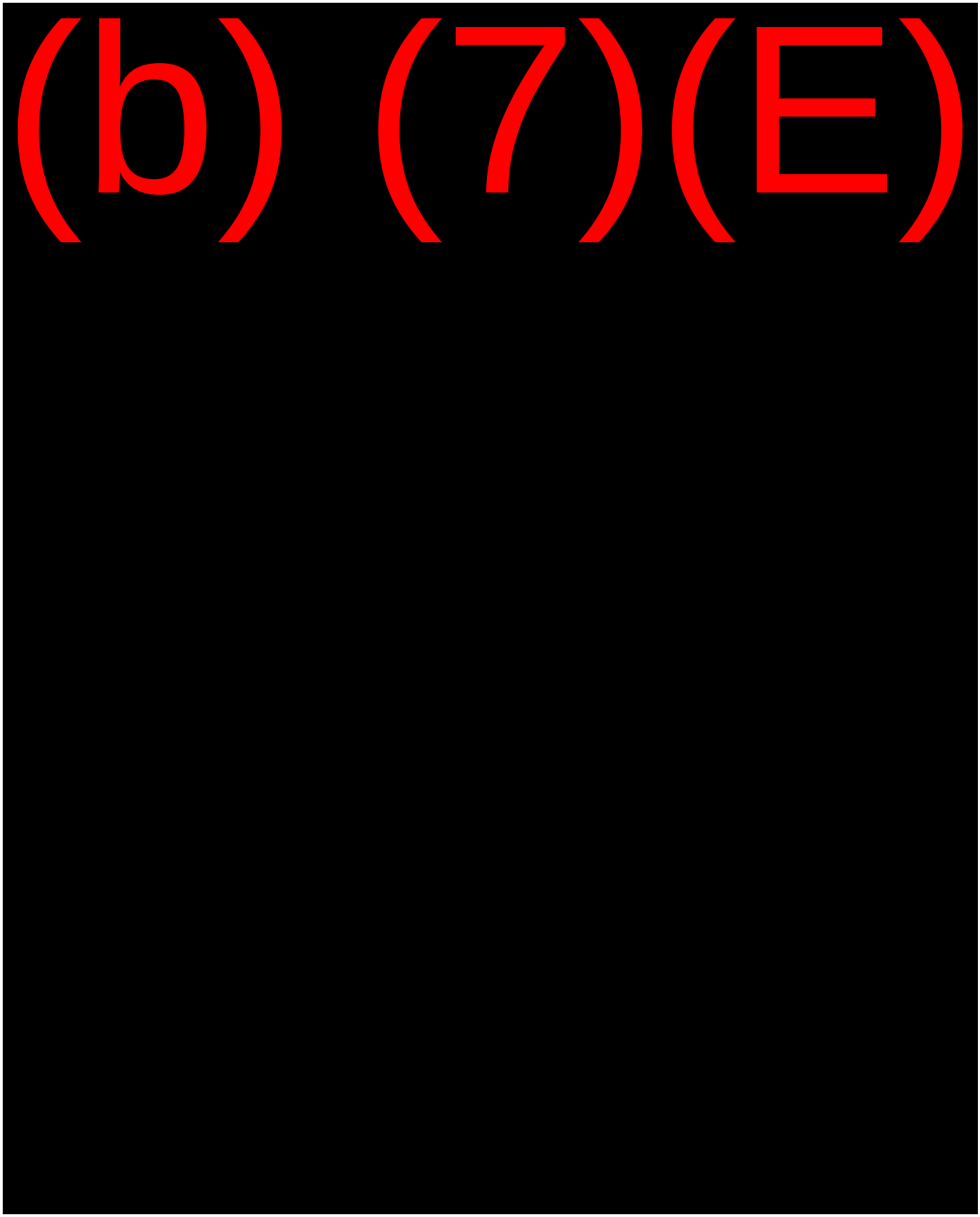
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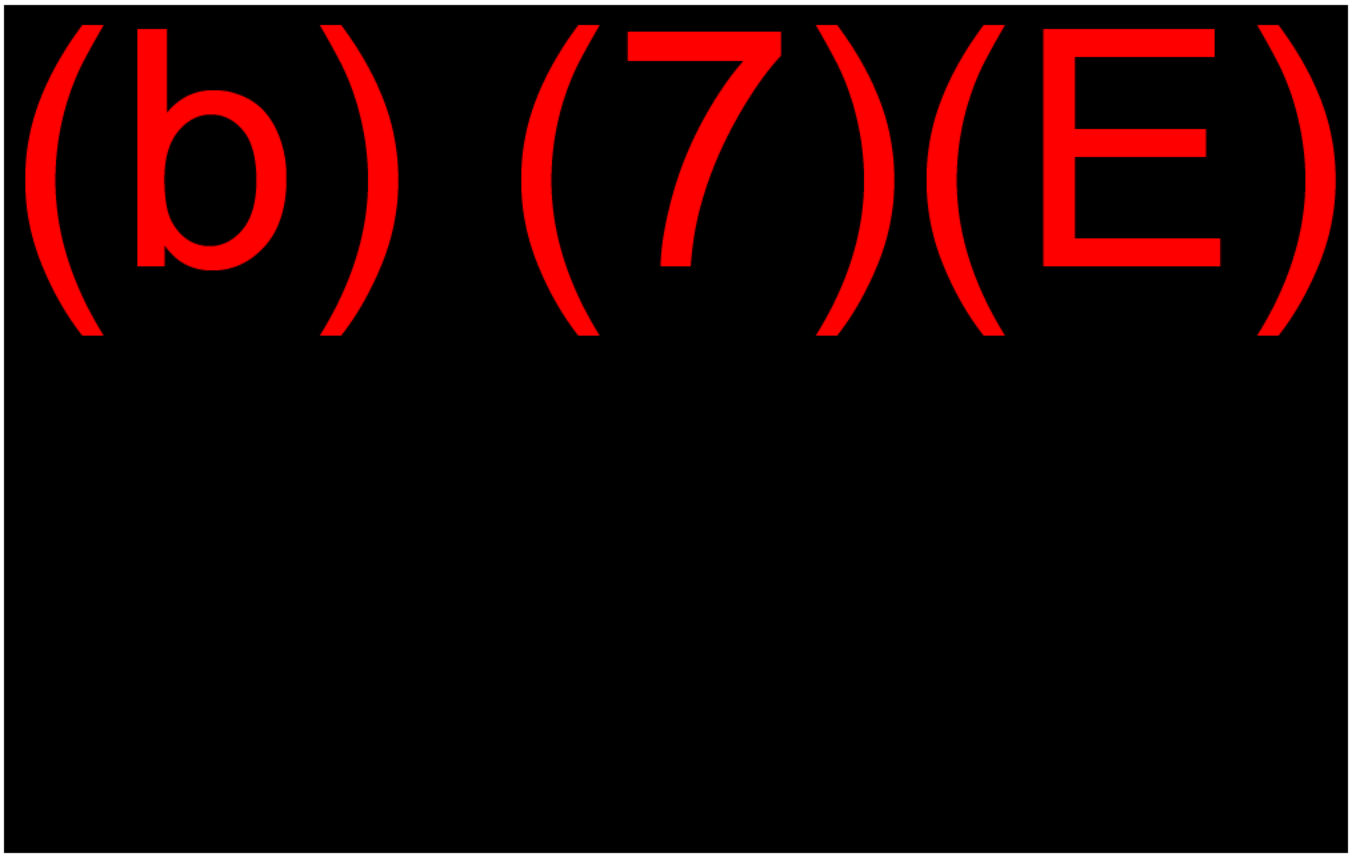
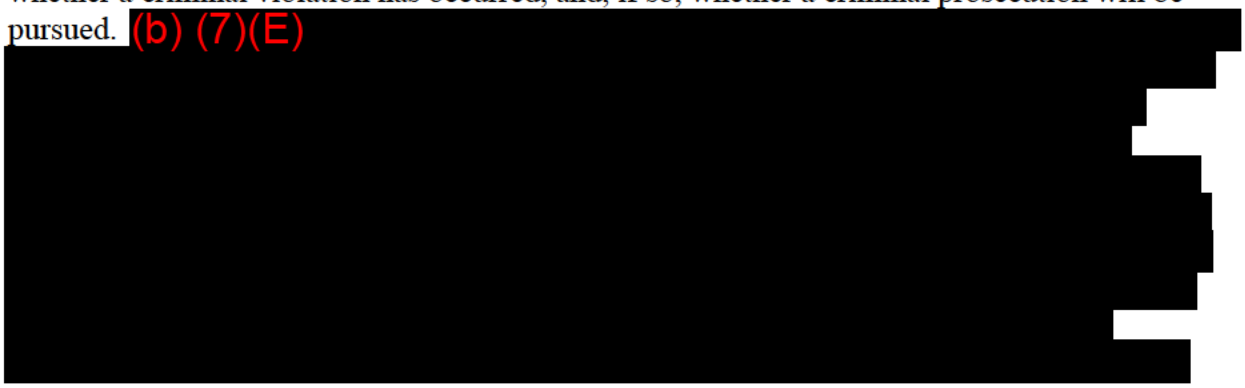


Chapter 19. CRIMINAL PROSECUTORIAL PROCEDURES

The U.S. Attorney's Office will determine if sufficient facts and evidence exist to establish whether a criminal violation has occurred, and, if so, whether a criminal prosecution will be pursued. (b) (7)(E)



19.1 Action by the United States Attorney's Office

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(b) (7)(E)

[redacted]

19.2 Criminal Statute of Limitations

The criminal statute of limitations that applies to commercial trade fraud investigations is the general statute of limitations contained in 18 U.S.C. § 3282. The statute requires that any indictment or information charging a criminal offense be issued within 5 years of the commission of the violation.

19.3 Plea Agreements and Sentencing

(b) (7)(E)

[redacted]

(b) (7)(E)
(b)

Chapter 20. 19 U.S.C. § 1592 CIVIL PENALTY PROCEDURES

Statutes and regulations provide a comprehensive administrative process whereby CBP FP&F assesses, mitigates, and collects civil penalties. In some instances, the administrative process will end with the collection of a penalty amount from the violator. In other instances, the administrative process will end in a referral to DOJ for civil litigation to collect the penalty. The civil penalty process can be long and complex. In many cases, years may pass between the initiation of a civil penalty claim and the collection of a penalty. SAs may be called on to provide significant support to various HSI and/or CBP offices and DOJ in the processing and litigation of civil penalty cases. Prompt and thorough attention to requests for such support can be instrumental in the successful resolution of penalty cases. (b) (7)(E)

20.1 Responsibility for Penalty Actions

HSI provides the results of its commercial trade fraud investigations to the appropriate FP&F Officers in the form of Penalty ROIs. The CBP FP&F Officer is responsible for reviewing the results of investigations to determine if a violation (i.e., a material false statement, act, or omission, or an importation contrary to law) occurred, the identity of the responsible parties, and the degree of the alleged violator's culpability (negligence, gross negligence, or fraud). Based on these determinations, the FP&F Officer may initiate penalty and duty claims against the culpable parties.

(b) (7)(E)

20.2 19 U.S.C. § 1592, Pre-Penalty Notice

The CBP FP&F Officer will prepare a written pre-penalty notice based on the results of an investigation if there is reasonable cause to believe that a violation of 19 U.S.C. § 1592 has occurred and that there is a penalty to be assessed. This notice informs the potentially liable parties of CBP's intent to issue a claim for a monetary penalty. SAs may assist FP&F in identifying facts to be articulated in the pre-penalty notice but should not prepare the notice themselves. Depending on the circumstances, FP&F may seek guidance from CBP OCC and/or CBP's RR prior to issuing a pre-penalty notice.

The amount of a proposed penalty under 19 U.S.C. § 1592 is based on the degree of culpability involved in the violation. If FP&F determines the culpability as:

A. Negligence

   The maximum penalty is an amount equal to two times the LOR which occurred as a result of the violation or, if there was no LOR, an amount equal to 20 percent of the dutiable value of the merchandise imported in connection with the alleged violation.

B. Gross Negligence

   The maximum penalty is an amount equal to four times the LOR or, if there was no LOR, an amount equal to 40 percent of the dutiable value of the merchandise imported in connection with the alleged violation.

C. Fraud

   The maximum penalty is an amount equal to the domestic value of the merchandise imported in connection with the violation. Domestic value, which will be determined by the appropriate Import Specialist, will generally equal the sum of the appraised value of the imported merchandise for CBP's purposes plus duty, charges (costs, insurance, and freight), and profit, although in some cases another basis of appraisement may apply.

Typically, the proposed penalty will be issued at the statutory maximum for the level of culpability charged. However, this is not required, and FP&F Officers may choose to issue a proposed penalty in an amount less than the statutory maximum.

If the alleged violator does not voluntarily tender lost duties and CBP cannot administratively recover those duties through liquidation, CBP may make a "duty demand" for the payment of lost duties under the provisions of 19 U.S.C. § 1592(d). Duty demands under 19 U.S.C. § 1592(d) may be issued not only to violators but also to anyone liable for payment of the lost duties. This includes the surety company that underwrote the IOR's importation bond.

20.3 Prior Disclosures Pursuant to 19 U.S.C. § 1592

A. The provisions of 19 U.S.C. § 1592 allow for significantly reduced penalties for violators who voluntarily disclose the circumstances of a violation and tender any duties owed prior to, or without knowledge of, the commencement of a formal investigation by HSI or CBP. Such voluntary disclosures are known as "prior disclosures." Generally, a prior disclosure claim must be made in writing to CBP, although verbal disclosures may be accepted. In either event, the disclosure claim must identify:

1) the class or kind of merchandise involved;

2) the involved entries by entry number or POE(s) and approximate entry date(s); and

3) the material false statement or omission made.

The disclosure must contain the true and accurate information that should have been provided in the entry documents, or state that the violator will submit any information that is unknown at the time of the disclosure to CBP within 30 days. The disclosure must be accompanied by a check in the amount of the violator's estimate of the duties and fees owed, or state that the violator will pay CBP's calculation of all duties and fees owed within 30 days of receipt of notice from CBP of that amount.

In the case of a non-fraudulent violation involving the false certification in a NAFTA Certificate of Origin (CBP Form 434), the violator must voluntarily and promptly provide all persons to whom the Certificate was provided written notice of the falsity of the Certificate (19 C.F.R. § 181.82). If the prior disclosure does not qualify under the NAFTA prior disclosure rule, it may nonetheless still qualify under 19 U.S.C. § 1592(c).

B. Investigation of Prior Disclosure Claims

HSI is responsible for investigating prior disclosure claims referred by CBP for investigation. (b) (7)(E) [redacted] RA can assist with the review of disclosure claims to validate the methodology used to compile the disclosure and review the completeness of the disclosure. The fact that a violator submits a prior disclosure claim in no way affects the U.S. Government's ability to criminally prosecute the violator. In fact, a prior disclosure claim may constitute an

admission or confession of criminal culpability. If the disclosed violation potentially constitutes a criminal offense or if other reasons exist which warrant further action by HSI, HSI should initiate a formal investigation and ask the CBP Port or CEE Director who referred the prior disclosure claim and CBP FP&F to withhold action pending completion of the investigation. (b) (7)(E) [redacted]

C. Prior Disclosures Pursuant to 19 U.S.C. § 1593a

The provisions of 19 U.S.C. § 1593a provide for significantly reduced penalties for violators who voluntarily disclose the circumstances of a violation prior to, or without knowledge of, the commencement of a formal investigation. The requirements for a valid prior disclosure are similar to those provided for prior disclosures of violations under 19 U.S.C. § 1592.

20.4 Response to Pre-Penalty Notice

The alleged violator is generally given 30 days during which to respond to the pre-penalty notice by filing a written response and/or by making an oral presentation to the FP&F Officer. In some instances, particularly in cases where the statute of limitations may run out soon, the alleged violator may be given as little as 7 days during which to submit a response to the pre-penalty notice. Alleged violators will often make factual assertions and/or challenge the facts developed in the investigation in their pre-penalty responses and oral presentations. For example, the pre-penalty response is often the first place where the alleged violator claims not to be culpable for the alleged violation because he or she exercised reasonable care by relying on guidance obtained from CBP, a customs broker, or other consultant. FP&F will routinely ask the case agent to review and comment on violator responses. At times, additional investigation may be necessary prior to FP&F responding to the alleged violator's assertions. SAs should carefully and promptly respond to such requests from FP&F, preferably in writing, since investigative findings may be incorporated into CBP's answers to violator claims and, as such, may form a part of the record that is ultimately reviewed for mitigation.

After reviewing the pre-penalty response and the SA's comments, FP&F may elect to proceed with the contemplated penalty, pursue a penalty in a lesser amount or at a different degree of culpability, or cancel the penalty action in total. Written notice of FP&F's decision will be given to the alleged violator.

20.5 Penalty Notice

If FP&F elects to further pursue the claim, a written Penalty Notice (CBP Form 5955A, Notice of Penalty or Liquidated Damages Incurred and Demand for Payment) will be issued to the violator(s). The Penalty Notice must set out the same details of the offense, as did the pre-

penalty notice. If the Penalty Notice involves no substantive changes from the pre-penalty notice, it may be incorporated by reference. If a demand for duties is made under the provisions of 19 U.S.C. § 1592(d), the Penalty Notice will formally set out that demand. The violator is normally afforded 30 days to make representations, both orally and in a written petition, as to why the penalty should be reduced or cancelled. A shorter period may be afforded to the violator if the statute of limitations will run out in less than 1 year.

20.6 Mitigation

After consideration of the violator's petition and the SA's comments, CBP may consider mitigation of the penalty. For penalties less than $50,000, the FP&F Officer may mitigate the penalty. For penalties greater than $50,000, the case must be forwarded to CBP's RR for mitigation. Guidelines for the mitigation of penalties under 19 U.S.C. § 1592 are set out in Appendix B to 19 C.F.R. § 171 of the Customs Regulations (19 C.F.R. § 171, app. B). Violators may make an oral presentation to RR during the mitigation process. RR may ask the HSI case agent or the IPR Center to attend such presentation and provide comments for consideration in the mitigation decision. Written notice of the mitigation decision and a demand for payment of the penalty and any duty demand made pursuant to 19 U.S.C. § 1592(d) will be provided to the violator.

20.7 Aggravating Factors

CBP may also consider the presence of aggravating factors to offset the presence of mitigating factors when calculating the amount of the proposed penalty claim or the amount of the administrative penalty decision. Aggravating factors may not be used to raise the level of culpability attributable to the alleged violations. Aggravating factors include obstructing an investigation or audit; withholding evidence; providing misleading information concerning the violation; prior substantive violations of 19 U.S.C. § 592 for which a final administrative finding of culpability has been made; textile imports that have been the subject of illegal transshipment; evidence of a motive to evade a prohibition or restriction on the admissibility of the merchandise; and failure to comply with a lawful demand for records or a 19 U.S.C. § 1509 Summons.

20.8 Supplemental Petition

A violator may submit a supplemental petition seeking further relief of the mitigated penalty. For penalties less than $25,000, a decision on supplemental petitions will be made by national FP&F Officers located at various field offices. For penalties exceeding $25,000, the decision on supplemental petitions will be made by RR. A supplemental petition may not be entertained if a waiver is requested and not provided.

20.9 Review of Penalties by the Department of Homeland Security

At any time in the administrative processing of a penalty claim, a violator may ask for review of the case by the Secretary of Homeland Security. The Secretary of Homeland Security has

delegated the penalty review to the CBP Commissioner. If the CBP Commissioner decides to review a case, the Commissioner may uphold the CBP mitigation decisions, direct CBP to modify its penalty and/or mitigation determinations, or independently negotiate a settlement of the claim with the violator.

20.10 Bankruptcy of the Violator

If, during the course of an investigation, a violator files for bankruptcy, an immediate review of the case should be completed to determine the administrative processing of a penalty. FP&F and the CBP OCC will refer the case to the National Finance Center to attempt recovery of the claimed penalty through the bankruptcy court.

20.11 Offers in Compromise

At any time, a violator may seek a negotiated settlement of the case with CBP. 19 U.S.C. § 1617 provides for such settlements, known as offers in compromise. Offers in compromise must be referred to the CBP RR and the CBP OCC for review and acceptance or rejection. The local CBP OCC office and RR will evaluate the settlement offer, make counter offers, and negotiate any final settlement. The HSI case agent may be asked to comment on assertions made by the violator or to conduct additional investigation to assist in the evaluation of the offer. Generally, action in any administrative penalty case will be held in abeyance while an offer in compromise is under CBP review.

20.12 Referral to DOJ for Litigation

If the violator refuses to pay the penalty after the administrative processing of a penalty claim has been completed, FP&F will refer the case to the CBP OCC. The CBP OCC will in turn refer the case to the Civil Division of DOJ in Washington, D.C., which may file a civil suit to recover the penalty amount. All litigation of penalty claims under 19 U.S.C. § 1592 is conducted by DOJ with the assistance of the CBP OCC. The suit will be filed in the original penalty amount (not the amount of any mitigated penalty) in the CIT in New York. If the violator fails to satisfy a judgment issued in favor of the U.S. Government by the CIT, the CBP OCC will request that DOJ file an action in Federal Court in the appropriate judicial district to seek enforcement of the judgment. The District Court may issue orders authorizing seizure of the violator's real or personal property to satisfy the judgment.

Chapter 21. CIVIL PENALTY PROCESSING

21.1 19 U.S.C. § 1593a, Penalties for False Drawback Claims

Administrative procedures under 19 U.S.C. § 1593(a) for the issuance of monetary penalties for false drawback claims are similar to those for the issuance of penalties under 19 U.S.C. § 1592. In cases involving negligence, 19 U.S.C. § 1593(a) provides for a monetary penalty not to exceed 20 percent of the actual or potential LOR for the first violation, and in an amount not to

exceed 50 percent of the actual or potential LOR for the second violation. The penalty for each succeeding negligent violation will be an amount not to exceed the actual or potential LOR. In cases involving fraud, the penalty will be an amount not to exceed three times the actual or potential LOR. Pursuant to 19 U.S.C. § 1593a(d), CBP may also demand the repayment of any drawback refund paid as a result of the violation.

21.2 19 U.S.C. § 1595a(b), Forfeiture and Other Penalties

Administrative penalty procedures for the issuance of monetary penalties pursuant to 19 U.S.C. § 1595a(b) are similar to those for the issuance of penalties under 19 U.S.C. § 1592. The chief differences are:

A. No pre-penalty notice is required. An FP&F Officer who chooses to initiate a penalty under 19 U.S.C. § 1595a proceeds directly to the issuance of a penalty notice.

B. The amount of penalty is the value of the merchandise imported contrary to law.

   Any referral of the penalty for litigation will be made to the U.S. Attorney in the judicial district in which the violation occurred, not to DOJ. Any litigation of the claim will occur in the U.S. District Court, not the CIT.

21.3 19 U.S.C. § 1641, Broker Penalties

19 U.S.C. § 1641 provides for disciplinary proceedings against customs brokers. The discipline can be either penalties or suspension/revocation of a license, <u>but not both</u> for the same violation.

A. 19 C.F.R. § 111.92(a): Pre-penalty notice is required regardless of the penalty amount.

B. Broker penalties fall into two categories: Non-egregious and Egregious.

C. A broker shall be penalized a maximum of $30,000 for any violation or violations of 19 U.S.C. § 1641 in any one penalty notice. If a broker is penalized to the maximum and continues to commit the same violation or violations, the appropriate sanction would be revocation or suspension of the broker's license. Barring such revocation or suspension action, the broker may again be penalized to the maximum the statute will allow.

Chapter 22. CIVIL STATUTE OF LIMITATIONS

The civil statute of limitation found in 19 U.S.C. § 1621 requires that suits or actions to recover duty under 19 U.S.C. § 1592(d), 19 U.S.C. § 1593a(d), or any penalty or forfeiture commence within 5 years of the date of discovery, except for violations involving 19 U.S.C. § 1592, 1593a. Any suit or action for a violation involving 19 U.S.C. § 1592 or 1593a must be commenced

within 5 years of the date of the violation, unless the violation involves fraud, in which case the suit or actions must be commenced within 5 years of the date of discovery of the fraud.

22.1 Tolling of the Statute

In the case of a 19 U.S.C. § 1592 or 1593a claim, the statute of limitations is not tolled until DOJ files a civil suit before the CIT. Under any other customs-related civil statute, the statute of limitations is not tolled until DOJ files a civil suit in the U.S. District Court. This only occurs after all CBP administrative processing of the claim is complete, the violator has failed to pay the mitigated penalty, and the CBP OCC has referred the case to DOJ. Commercial trade fraud investigations, therefore, must be completed in a timely fashion so as to allow sufficient time to administratively process the penalty and refer the case to DOJ before the statute expires. DOJ policy requires that all such referrals be received by DOJ at least 6 months prior to the expiration of the statute. The statute of limitations is suspended for any period in which a violator is absent from the United States.

22.2 Waivers of the Statute of Limitations

A violator may voluntarily waive the right to raise the statute of limitations as an affirmative defense in any litigation. Violators often find it in their interest to waive the statute of limitations during the administrative processing of a penalty case, because their failure to do so when the statute is close to expiring may result in CBP's use of accelerated administrative proceedings to process a penalty claim and refer it to DOJ for the initiation of civil litigation. By waiving the statute, violators give themselves added time to respond to CBP's penalty actions.

A waiver of the statute of limitations must be requested *if 3 or more years have elapsed since the date the alleged violation was committed*. This requirement is the same regardless of the statute violated or the degree of culpability allegedly involved.

Chapter 23. COORDINATING CRIMINAL PROSECUTION AND CIVIL PENALTY ACTIONS

23.1 Coordination Between the Assistant U.S. Attorney and FP&F

Once a case has been accepted for criminal prosecution, the HSI case agent serves as the point of contact between the AUSA, CBP, and ICE. The case agent should ensure that actions taken by the AUSA and CBP do not conflict and that actions taken in the criminal case support and enhance CBP's ability to pursue civil penalties arising from the violations. This includes:

(b) (7)(E)

23.2 Global Settlements

Criminal cases are often resolved through pre- or post-indictment plea negotiations. In such cases, the violator, through counsel, agrees to plead guilty to one or more charges specified in an indictment or information, with remaining charges to be dismissed. Violators often wish to resolve potential civil penalties at the same time that they enter into criminal plea agreements. CBP can consider such "global settlements" under procedures established for processing offers in compromise.

The CBP OCC, in coordination with OPLA, will work with the AUSA to coordinate global settlements. This will include discussions among the local CBP OCC and OPLA, RR, RA, HSI SAs, and the AUSA, regarding what criminal sentences and civil penalty amounts will be mutually acceptable for the purpose of negotiating the global settlements with the defense counsel.

The criminal prosecution process cannot be used to leverage a related civil penalty case. Moreover, the AUSA can make no promises, representations, or conditions in the plea agreement that bind CBP and/or ICE action in accepting or rejecting a civil offer. Similarly, CBP or ICE can make no promises, representations, or conditions in its civil negotiations that bind DOJ in a criminal plea. Plea agreements and civil negotiations, although linked to each other, must be conducted as concurrent, not contingent, actions.

Global settlements should be pursued in all cases in which the violator has entered into criminal plea negotiations. SAs involved in cases where global settlements may be employed will seek guidance from the local ICE OPLA office, which will in turn consult with CBP OCC.

Chapter 24. PUBLICITY IN COMMERCIAL TRADE FRAUD CASES

The deterrent effect of commercial trade fraud cases can be greatly enhanced by publicizing the results of criminal prosecutions and civil penalty actions. HSI case agents and Group Supervisors are encouraged to seek publicity, through the appropriate chain of command, from the Office of Public Affairs and the U.S. Attorney's Office. They may draft sample articles for review and approval. Certain information related to criminal trade fraud cases, such as indictments, informations, arrests, and convictions, are matters of public record. Although local policies may differ, the U.S. Attorney's Office generally handles press releases and press conferences related to such actions. ICE may assist the U.S. Attorney in preparing press releases by providing background information on ICE and CBP operations and requirements related to the violation in question. ICE should follow local U.S. Attorney guidelines regarding direct contacts with representatives of the press or other media, and should take special care to ensure that only information that is a matter of public record is discussed.

Information related to CBP civil penalty actions may be made public only after the final collection of a penalty. After the penalty proceedings are complete, ICE may release the identity of the violator, the section of the law violated, the LOR, the amount of the penalty originally assessed, as well as any mitigated penalty amount, and the amount of money actually paid by the violator. *See* 19 C.F.R. § 103.16. The disclosure of any other information may be a violation of the Trade Secrets Act or the Privacy Act. Contacts with representatives of the press or media regarding civil penalty cases should be closely coordinated with the ICE Office of Public Affairs.

Appendix A

ACRONYMS

ABI	Automated Broker Interface
ACE	Automated Commercial Environment
ACS	Automated Commercial System
AD	Anti-Dumping Duty
AECA	Arms Export Control Act
AES	Automated Export System
ATS	Automated Targeting System
AUSA	Assistant United States Attorney
BPI	Business Proprietary Information
C3	Cyber Crimes Center
CAFRA	Civil Asset Forfeiture Reform Act
CBP	U.S. Customs and Border Protection
CD-ROM	Compact Disk Read-Only Memory
CEAR	Commercial Enforcement Analysis and Response
CEE	Center of Excellence and Expertise
C.F.R.	Code of Federal Regulations
CI	Confidential Informant
CIE	Customs Information Exchange
CIT	U.S. Court of International Trade
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CLEAR	Consolidated Lead Evaluation and Reporting
COMOIR	Commercial Operations Memorandum of Information Received
CMAA	Customs Mutual Assistance Agreement
CPSC	Consumer Product Safety Commission
CROSS	Customs Rulings Online Search System
CSO	Civil Society Organization
CTAC	Commercial Targeting and Analysis Center
CVD	Countervailing Duties
DARTTS	Data Analysis and Research for Trade Transparency System
DHS	Department of Homeland Security
DOC	Department of Commerce
DOJ	Department of Justice
DOT	Department of Transportation
E&C	Enforcement and Compliance
EEI	Electronic Export Information
EPA	U.S. Environmental Protection Agency
FAS	Field Analysis Specialist
FCA	False Claims Act
FDA	U.S. Food and Drug Administration
FOUO	For Official Use Only
FP&F	Fines, Penalties, and Forfeitures

FTA	Free Trade Agreement
HB	Handbook
HQ	Headquarters
HSI	Homeland Security Investigations
HSI-FL	Homeland Security Investigations Forensic Laboratory
HTSUS	Harmonized Tariff Schedule of the United States
ICE	U.S. Immigration and Customs Enforcement
ICM	Investigative Case Management
IEEPA	International Emergency Economic Powers Act
IOR	Importer of Record
IPR	Intellectual Property Rights
ITA	International Trade Administration
ITC	U.S. International Trade Commission
ITDS	International Trade Data System
ITS	International Trade Specialist
LFFP	Lens-Fitted Film Package
LOR	Loss of Revenue
MLAT	Mutual Legal Assistance Treaty
NAAQS	National Ambient Air Quality Standards
NAFTA	North American Free Trade Agreement
NCFTA	National Cyber Forensics Training Alliance
NGO	Non-Governmental Organization
NIS	National Import Specialist
NTAG	National Targeting and Analysis Group
NTC	National Targeting Center
NTC-C	National Targeting Center-Cargo
NTC-I	National Targeting Center-Investigations
OCC	Office of the Chief Counsel
OCI	Office of Criminal Investigations
OFO	Office of Field Operations
OI	Office of Investigations
OPLA	Office of the Principal Legal Advisor
OT	Office of International Trade
POE	Port of Entry
PTI	Priority Trade Issue
RA	Regulatory Audit
RICO	Racketeer Influenced and Corrupt Organization
ROI	Report of Investigation
RR	Regulations and Rulings
SA	Special Agent
SAC	Special Agent in Charge
SAMEPH	Seized Asset Management and Enforcement Procedures Handbook
SEACATS	Seized Asset and Case Tracking System
SITS	Supervisory International Trade Specialist
SUA	Specified Unlawful Activity

T3U	Tactical Targeting Unit
TAP	Trend Analysis and Analytical Selectivity Program
TBML	Trade-Based Money Laundering
TCO	Transnational Criminal Organization
TECC	Trade Enforcement Coordination Center
TEOAF	Treasury's Executive Office for Asset Forfeiture
TFF	Treasury Forfeiture Fund
TLS	Telecommunications Linking System
TPVT	Textile Production Verification Team
TTU	Trade Transparency Unit
U.S.	United States
U.S.C.	United States Code
USCS	U.S. Customs Service
USFWS	U.S. Fish and Wildlife Service
USPIS	U.S. Postal Inspection Service
USPS	U.S. Postal Service
WMD	Weapons of Mass Destruction