



Customs Broker Criminally Charged for Facilitating Importation of Counterfeit Merchandise

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On December 3, 2007, a customs broker in Newark, New Jersey, was criminally charged with aiding and abetting an importer regarding the introduction of counterfeit merchandise into the United States from China. According to the indictment, the customs broker “exploited his access to the U.S. Customs and Border Protection database to facilitate the movement of counterfeit goods through the Port of Newark...” Every customs broker has access to the CBP database called Automated Broker Interface or “ABI”. ABI is the means by which importers, customs brokers, and CBP officers electronically communicate regarding the entry of foreign merchandise into the United States. Potentially then, just being a customs broker puts him or her as a criminal target by any Federal Prosecutor whenever the importer is suspected of committing a criminal act, such as smuggling drugs or importing counterfeit merchandise. Although criminally charging smugglers is common, it is almost unheard of to charge a customs broker as part of the smuggling scheme.

The Indictment criminally charged all of the persons involved in the scheme to import counterfeit merchandise that, if genuine, would have been worth over \$200 million. The Indictment stated:

Huff, a licensed customs broker, had access to a CBP database that allowed licensed customs brokers to ascertain the status of containers that were en route or had arrived at the Port...Huff exploited his access to this CBP database to facilitate the movement of counterfeit goods through the Port on behalf of the defendants' criminal organization'.

The smuggling of counterfeit goods scheme was discovered when a Special Agent of the U.S. Immigration and Customs Enforcement (ICE), operating undercover as a corrupt longshoreman, was introduced to the importer. The scheme was allowed to continue for a while with the knowledge of both CBP and ICE officials. CBP and ICE are both part of the huge U.S. Department of Homeland Security. Over 100 containers of counterfeit merchandise including Nike shoes, Burberry handbags, and Polo Ralph Lauren clothing, entered the United States. The merchandise were all misdescribed on the ocean cargo bills of lading, and other documentation submitted to CBP in the normal entry and clearance procedures.

What is unique in this criminal case was how the criminal charges against the customs broker focused on his use of information obtained through ABI. According to the Complaint:

Huff explained various ways to avoid CBP scrutiny of containers. For example, Huff said that if there was a container upon which CBP was focusing, they could abandon the container or export it immediately, before the container made entry...

The customs broker, in recorded conversations with the undercover ICE Agent, allegedly described how his access to ABI could assist in preventing CBP officials from examining and detecting the counterfeit merchandise in the containers. The broker allegedly stated: “Ten days in advance of a container’s arrival, I’ll know if there’s an exam or if it’s released...” From the recorded conversations, the broker appeared to know the merchandise was counterfeit,

that the documentation he prepared and submitted to CBP was fraudulent, and that if CBP had selected a container for examination, he believed he could simply advise CBP that the importer changed its mind, and wanted to export the container immediately, thereby avoiding any scrutiny of the container by CBP officials. Mr. Huff's actions certainly seem to be criminal, however, this case also demonstrates a broadening of the liabilities of all customs brokers. The same could easily be said for ocean cargo carriers and airlines which submit information electronically to CBP through a special system called Automated Manifest System or "AMS".

Of equally great interest and alarm to customs brokers is that Robin Huff had filed entries with CBP as a third-party customs broker, sometimes referred to as an "out port broker". According to paragraph 83 of the Criminal Complaint prepared by the ICE undercover agent:

I learned that Huff worked as a licensed customs broker for a customs brokerage based in New York, NY. I subsequently learned that Huff was fired by that company and thereafter worked as an independent customs broker. Although Huff continued to hold an active customs license, he could not file entry paperwork at the Port because his permit to file such documents had been revoked. Accordingly, after his permit was revoked, Huff filed entry paperwork as a third-party broker through various customs brokerage companies.

In other words, a legitimate customs broker had authorized Mr. Huff to use its customs broker license on behalf of the importer. The original, legitimate customs broker thereby unwittingly allowed Robin Huff to use its good name to be connected with the fraudulent documents filed by the Mr. Huff, who now had a sub Power of Attorney authorization from the first customs broker. Mr. Huff would not then be in a position to facilitate the illegal scheme of importing counterfeit merchandise into the United States. At a minimum, that would make law enforcement agencies suspicious of the original customs brokerage company who had authorized the second customs broker to make false statements and file false information with CBP.

The CBP regulations regarding customs brokers are very specific and demanding. Qualifying as a customs broker by CBP is difficult because of a comprehensive written examination and rigorous background check. Even after being licensed by CBP, there are numerous ethical and technical requirements for customs brokers. As you would expect, the CBP Regulations at 19 CFR 111.32 state that a broker must not file or assist the filing of any document with CBP known to be false.

Revocations of customs broker licenses or permits for cause, while rare, do occur. CBP regulations at 19 CFR 111.53 provide for revocation if a broker has been convicted for any felony or misdemeanor which involved the importation of merchandise. Even if a customs broker counsels or aids or abets any other person to violate any law enforced by CBP, the broker's license and/or permit may be revoked. CBP will investigate complaints made against customs brokers.

In response to the potential misuse of the customs broker's license described above, the Field Director of the Office of Regulatory Audit in New York had issued a letter to importers in the New York and New Jersey area "in identifying all Customshouse brokers that were authorized to conduct CBP business on behalf of your company during the last two years." In support of CBP's efforts in conducting audits of customs brokers, the letter from CBP continued: "We request a copy of each power of attorney that was granted to your authorized Customshouse brokers, if available."

Customs brokers and freight forwarders, along with other logistics companies, are increasingly under scrutiny by Federal law enforcement authorities in their attempt to follow all of the new anti-terrorism and other laws that regulate international commerce. For example, the Bureau of Industry and Security of the U.S. Department of Commerce, has increased the number of monetary penalties assessed freight forwarders who export cargo on behalf of a client exporter. The U.S. Congress is considering legislation that would punish "any person who introduces into interstate commerce or delivers for introduction into interstate commerce an article of food that is adulterated." See H.B. 3610. The penalties would be \$50,000 for an individual and \$250,000 for a company.

That means a customs broker, warehouseman, trucking company, or steamship line could each be liable if they unknowingly transported adulterated food, even if they never actually looked at the merchandise to see what was being transported, but followed international standard operating procedures of only looking at the documentation.

In conclusion, the tendency of Federal law enforcement authorities to investigate and prosecute or penalize logistics companies, especially customs brokers and freight forwarders,

is a disturbing trend. Logistics companies must be vigilant to be informed about relevant, changing Federal regulations. Customs brokers should be extremely careful about allowing a third party broker to use its permit. Customs brokers and forwarders should be attentive to their customers which could use their necessary international transportation services for illegal objectives. It is a privilege, not a right, to be a customs broker licensed by U.S. Customs and Border Protection. Guard that privilege jealously, but if the unexpected occurs, promptly seek legal guidance. ■

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