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CBP Rules Inadmissible Food Ineligible for Duty Refund If Importer Can Recondition

Food that was denied entry but can be reconditioned to meet FDA requirements isn't prohibited merchandise, so it isn't eligible for a refund if it's exported or destroyed, CBP said in a recent ruling.

Though a provision of the customs regulations allows refunds of duties and taxes on goods that have left CBP custody if they were entered in good faith but later found to be prohibited, if an importer is given the option of bringing the food into conformity, then the food is considered restricted merchandise, and is ineligible for the refund provision, CBP said.

The ruling, H282725, dated Aug. 23 and released Dec. 5, came to CBP headquarters on a request for internal advice—filed over eight years ago in 2016—from CBP staff at JFK Airport.

An importer of frozen shrimp had filed a post-entry amendment in 2015, asking for a refund of antidumping duties on the frozen shrimp it exported or destroyed under

CBP supervision after being refused admission by the FDA due to the presence of nitrofurans, a type of antibiotic. Importantly, the goods had already been released before the importer received a notice of redelivery. And that notice of redelivery gave the importer the option of bringing the shrimp “into conformity.”

In its ruling, CBP said that goods are eligible for refunds if they haven’t left continuous CBP custody. And that means actual physical custody—goods that receive a “CBP release” message in ACE but remain in CBP’s physical custody are still eligible for the refund.

But once goods leave CBP’s continuous custody, they are no longer eligible for refunds, with the exceptions of duty drawback, bonded articles and merchandise entered in good faith but later found to be prohibited. According to one of those previous rulings, prohibited merchandise is merchandise that can’t be lawfully imported under any circumstances. On the other hand, goods that may be altered to come into conformance with U.S. requirements, then lawfully entered, are restricted merchandise, and don’t qualify for a refund under the exception for prohibited merchandise.

And despite CBP JFK’s concerns that those previous rulings and the relevant customs laws may conflict with Customs Directive 5610-006A, which covers entry deletion and entry or entry summary cancellation, the directive itself references the CBP regulations on refunds for goods released from CBP custody, CBP headquarters said.

"Thus, while the language of C.D. No. 5610-006A appears to be contradictory to 19 U.S.C. § 1558 because its language is not fulsome, the supporting regulatory citations given within the offending sentence clarifies that it is addressing prohibited merchandise that is released from CBP’s custody," the agency said. — Joanna Marsh

CPSC Approves Final Rule Requiring Electronic Filing of Certificates of Compliance

The Consumer Product Safety Commission has voted to require imported consumer products regulated by the CPSC to have their certificates of compliance filed

electronically.

This final rule will make product inspections more efficient and will improve the ability to target high-risk products imported into the U.S., CPSC said. It will enable CPSC inspectors to identify and seize imported consumer products at the ports should they violate regulated safety standards. The ability to use eFiling will also reduce inspection frequency and hold times for compliant product importers, the commission said this week.

Brokers have expressed skepticism of trade readiness for electronic filing of CPSC data in ACE, saying that there hasn't been enough time to test the new requirements (see ITT 11/15/2024).

"The bipartisan passage of the eFiling rule is one of the most consequential steps CPSC will take to modernize our screening process at ports of entry," CPSC Chair Alex Hoehn-Saric said in a [Dec. 18 release](#). "Ensuring that imported products are safe for Americans, especially our kids, is a priority for the agency. eFiling will strengthen CPSC's ability to target unsafe products and prevent them from coming into the country and into consumers' homes."

CPSC officials had indicated earlier this fall that the final rule would be coming out soon (see ITT 09/24/2024). The ability to use eFiling would be part of the CPSC's partner government agency message set in ACE.

According to CPSC, the rule affects most imported consumer products as well as those produced domestically, effective 18 months after the final rule is published in the Federal Register. "A 24-month effective date will apply to consumer products imported into a Foreign-Trade Zone (FTZ) and subsequently entered for consumption or warehousing," CPSC said.

The eFiling program affects all imported consumer products subject to a mandatory safety standard, including those subject to de minimis. Importers of these products requiring certification will need to file the following data elements during entry filing, according to CPSC: identification of the finished product; party certifying compliance; each consumer product safety rule to which the finished product has been certified; date and place the finished product was manufactured; when and

where the finished product was most recently tested for compliance; and contact information for the person maintaining test records.

The eFiling program underwent alpha and beta industry testing pilots between 2016 and 2024, CPSC noted. The commission is inviting up to 2,000 more importers to sign up before eFiling becomes mandatory (see ITT 11/14/2024).

All five commissioners voted to approve the rule, while three voted in favor of an amendment extending the general implementation deadline from 12 months to 18 months.

"America faces a flood of foreign direct-to-consumer shipments, and the tide is rising. These e-commerce shipments often originate from countries that do not respect U.S. safety laws. At the same time, CPSC has a limited capacity to monitor the millions of small parcels that enter the U.S. marketplace duty free each day under the de minimis exemption," Commissioners Douglas Dziak and Peter A. Feldman said in a [Dec. 18 joint statement](#).

They continued: "This rule does not create additional testing and certification burdens for firms. Importers already must provide testing certificates in paper format upon request. This new rule will bring the Commission's tracking and targeting system into the 21st century by requiring electronic filing of certificate data. In doing so, this rule will make it more difficult for foreign manufacturers who ignore existing testing and certification requirements to evade detection."

While all five Commissioners praised the final rule's passage, [Commissioner Mary T. Boyle warned](#) that the final rule might have limited effectiveness, given that it only touches a fraction of imported consumer products and that the rule is subject to federal funding levels.

"Sharpening our detection tools to identify noncompliant toys and infant products represents important progress in an ever-changing electronic global marketplace. But even for regulated products, this rule offers no guarantees. That is, the rule enhances the current targeting approach, but it does not preclude noncompliant products from entering the country," Boyle said.

Furthermore, "we must be forthright about the budgetary context in which this rule is being adopted. To say the least, the agency is facing a challenging and uncertain

funding environment. Adopting this rule is committing the agency to long term IT resource requirements that may be difficult to meet in the future,” Boyle continued. This final rule gets short-term funding from the American Rescue Plan Act, a COVID-19 pandemic stimulus measure that is expiring, “and the agency will need to tap a yet unidentified funding stream to sustain the effort going forward on a long-term basis,” Boyle said. “With this rule, the agency seeks to mitigate risk—which I fully support—but we are also taking on other risks—financial and programmatic—if we do not receive the funds necessary to sustain a sophisticated technology infrastructure or face sweeping cuts to other vital CPSC program areas to support the e-filing program.” — Joanna Marsh

Third Party Fabric in AGOA May Face Changes; GSP Still Languishing

House Ways and Means Committee member Rep. Darin LaHood, R-Ill., said that there will be a renewed bipartisan effort to extend the African Growth and Opportunity Act next year. He called AGOA “something that is very beneficial to our U.S. trade policy.” But LaHood left the door open to phasing out or changing the third-party fabric provision of AGOA in the 2025 reauthorization.

Companies that contract with African apparel manufacturers say that allowing clothing that uses Asian fabric to qualify for duty-free benefits under AGOA is necessary to make African production cost-competitive (see 240612005 and ITT 10/30/2023). That third-party fabric rule is allowed for 21 of the 35 beneficiary countries, and nearly all the garments imported from AGOA countries are covered by the rule.

When asked if House Republicans want to phase out third-party fabric rules, LaHood said, “I think there’s a mechanism that we can get to a resolution on that.” LaHood declined to say what he would like that resolution to be.

Ways and Means ranking member Rep. Richard Neal, D-Mass., said that moving AGOA in the House in the lame duck would be “a heavy lift.” But Neal said if Congress turns to the legislation in 2025, “I’m all in, I think it should be done.” Advocates for AGOA are anxious that the program be extended well ahead of the September 30, 2025, expiration date, given the fate of the Generalized System of

Preferences benefits program. That program had waived about \$1 billion a year in duties for importers that took advantage of it, but the volume of goods that qualify for GSP is likely lower now, given that some importers who had moved manufacturing away from China to GSP countries have since moved production back, according to the Coalition for GSP.

When Congress returns in January, GSP will not have existed for four years. When asked by International Trade Today if he wants to bring back GSP, House Speaker Mike Johnson didn't respond directly on the merit of the policy, or on whether action would have to wait for the Republicans to clear what he called the "very aggressive first 100 days agenda in Congress."

"We haven't even had a chance to really address that in any detail, so stay tuned on that," he said during a morning press conference at the Capitol.

LaHood said he doesn't know if action on GSP will have to wait for Republicans to tackle immigration policy and tax cut extensions. In the past, GSP has sometimes passed the House on the suspension calendar, which allows bills to move without dedicating time for debate, if they can get two-thirds of the votes. (The last time it did so, it passed 400-2). However, the last time it passed the House, it couldn't pass the Senate through unanimous consent; instead, it hitched a ride on a government spending bill in March 2018.

When asked if the pro-tariff posture of the administration could mean GSP is out-of-step with political sentiment, and will not come back, LaHood responded, "Well, my hope is that GSP is passed by the Congress. We passed it in the committee, so Ways and Means Republicans, and some Democrats, are fully supportive of it. I think we're going to continue to push to have that done in the new Congress. I think it's imperative that our trade policy be predicated on things like GSP."

Ways and Means member Rep. Beth Van Duyne, R-Texas, who voted for GSP restoration earlier this year, was less sure GSP would return. "I would say it's a discussion to have, absolutely," she said.

Ways and Means member Rep. Blake Moore, R-Utah, who also is a supporting player on the House Republicans' leadership team, said he believes Republicans

are still motivated to act on GSP in 2025, “because the whole trade world is going to be a big, constant debate.” The program’s support is “incredibly bipartisan,” he said.

The top Democrat on the committee, Neal, said he hopes GSP is not gone forever. When asked if GSP’s removal of tariffs is contrary to the incoming administration’s trade philosophy, Moore responded, “I think there’s a needle to thread there, honestly. I think it’s important, because ... of the results we've seen from GSP, being able to move manufacturing away from China.” He said China is afraid U.S. companies will move production out of China to Vietnam, the Philippines and Mexico. The Philippines is a GSP beneficiary; Vietnam is not.

“There’s still plenty of motivation for it; it’s going to be a unique world of trade in Q1, for probably all of 2025,” Moore said. “There’s opportunities to work on all of this together.” — Mara Lee

Chinese Tungsten to Face 25% Tariff, Tariffs on Chinese Polysilicon to Double Jan. 1

The Office of the U.S. Trade Representative is hiking tariffs on Chinese solar wafers and polysilicon to 50% and Chinese tungsten products covered by Harmonized Tariff Schedule subheadings 8101.94.00, 8101.99.10, and 8101.99.80 will face 25% tariffs, beginning Jan. 1.

These hikes were not originally part of the Section 301 action review, but the office received a request to hike tariffs on tungsten and said that doing so made sense in light of the tariffs on other critical minerals. It also received a request to double tariffs on solar cell inputs. The administration already planned to raise the tariffs on solar cells.

[The official notice](#) said that after USTR said it planned these hikes, comments were split on tungsten. “Comments opposing increases primarily assert limited availability of tungsten products outside of China, estimating that China accounts for approximately 80 percent of global tungsten reserves, and insufficient quantities available from third country sources,” the office said.

But USTR said that although commenters said higher costs for tungsten would increase production costs, it believes that relying on China for these products puts national security at risk, and higher tariffs on Chinese imports are needed to give domestic production breathing room. The tungsten products currently have no duty applied.

The tariffs on 2804.61.00 and 3818.00.00 will go from 25% now to 50% on Jan. 1. "Nearly all comments support increasing tariffs on polysilicon, noting the importance of the tariffs in helping to ensure the development and growth of the domestic industry producing polysilicon and downstream products and develop[ing] alternative supply chains outside of China," the notice said, though some who supported the increase said the hike should be delayed to give domestic producers more time to ramp up production. — Mara Lee

NMFS to Finalize Rule on Seafood Inspections

The National Marine Fisheries Service is finalizing a rule that revises current regulations in order to "improve the uniformity and reliability of seafood inspection services," according to a [notice](#). This rule would compel the NMFS Office of International Affairs, Trade and Commerce to adopt recognized best practices for inspection. The notice said that the existing regulations have not been significantly updated since they were first issued in 1971.

"NMFS anticipates that these revisions will benefit the seafood industry by streamlining seafood inspection services and providing improved, more accurate inspection results," NMFS said. The rule is effective Jan. 15. NMFS had sought comments on the proposed rule in April (see ITT 04/24/2024).

ITC Finds Injury, Sets Up AD/CVD Orders on Shrimp From 4 Countries

The ITC found imports of frozen warmwater shrimp from four countries materially injure a U.S. industry, paving the way for antidumping and countervailing duty orders, the agency [announced](#) Dec. 17.

It issued this final determination Dec. 12 following a Commerce Department finding that imports from Indonesia are sold in the U.S. at less than fair value and imports from Ecuador, India, and Vietnam are subsidized by their countries' governments (see ITT 10/28/2024).

As a result, the Commerce Department will issue countervailing duty orders on frozen warmwater shrimp imports from Ecuador, India, and Vietnam, and an antidumping duty order on imports of the product from Indonesia.

FDA Seeks Comment on Guidance on Cosmetic Product Facility Registrations

The FDA is seeking comments on industry guidance related to cosmetic product facility registrations and product listings, it said in a [Federal Register notice](#). This guidance, which the agency published under the Modernization of Cosmetics Regulation Act of 2022, includes three draft frequently asked questions and answers within Appendix B.

The FDA is accepting comments on the FAQs by Jan. 13. It will begin work on this final section of the guidance afterward. The rest of Appendix B has been finalized, according to the FDA.

FDA to Open VQIP Application Portal for FY 2026


The FDA will open the application portal on Jan. 1 for the Voluntary Qualified Importer Program for fiscal year 2026, according to the agency. The voluntary, fee-based program provides importers with expedited review and importation of human and animal foods into the U.S. To participate in VQIP, food importers must meet certain eligibility requirements, including ensuring that the facilities of their foreign suppliers are certified through the FDA's Accredited Third-Party Certification Program, [the agency said](#).



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