

§ 12.38

Bureau of Alcohol, Tobacco and Firearms.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-329, 43 FR 43454, Sept. 26, 1978; T.D. 82-145, 47 FR 35477, Aug. 16, 1982; T.D. 89-1, 53 FR 51253, Dec. 21, 1988]

§ 12.38 Labeling requirements; shipments.

All shipments of liquor not labeled as required by 18 U.S.C. 1263 and any vessel or vehicle, other than a common carrier, used in the transportation of such liquor shall be seized and disposed of in accordance with 18 U.S.C. 3615 .

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 70-249, 35 FR 18265, Dec. 1, 1970; T.D. 82-145, 47 FR 35477, Aug. 16, 1982; T.D. 89-1, 53 FR 51253, Dec. 21, 1988; CBP Dec. 04-28, 69 FR 52599, Aug. 27, 2004 ; CBP Dec. 08-25, 73 FR 40725, July 16, 2008]

UNFAIR COMPETITION

§ 12.39 Imported articles involving unfair methods of competition or practices.

(a) *Determinations of the International Trade Commission.* Under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), unfair methods of competition and unfair practices in the importation or sale of articles, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated United States industry, or to restrain or monopolize trade and commerce in the United States, are unlawful. After an investigation of an alleged violation of section 337, the U.S. International Trade Commission ("the Commission") may determine that section 337 has been violated. The Commission also may determine during the course of its investigation that there is reason to believe that a violation of section 337 exists. The Commission's determination in either case is effective on the date of its publication in the FEDERAL REGISTER and is referred to the President, who may disapprove the determination for policy reasons on or before the close of a 60-day period beginning on the day after the day he receives a copy of the determination. A Commission determination disapproved by the President shall have no force or effect as of the date the Commission is notified of his disapproval. If the Com-

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mission's determination is not disapproved by the President during the 60-day period, or if he notifies the Commission before the close of the period that he approves the determination, the determination becomes final on the day after the close of the period or the day of the notification, whichever is earlier.

(b) *Exclusion from entry; entry under bond; notice of exclusion order.* (1) If the Commission finds a violation of section 337, or reason to believe that a violation exists, it may direct the Secretary of the Treasury to exclude from entry into the United States the articles concerned which are imported by the person violating or suspected of violating section 337. The Commission's exclusion order remains in effect until the Commission determines, and notifies the Secretary of the Treasury, that the conditions which led to the exclusion no longer exist, or until the determination of the Commission on which the order is based is disapproved by the President.

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the International Trade Commission to be sufficient to protect the complainant from any injury. On or after the date that the Commission's determination of a violation of section 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination will be refused entry. If a violation of section 337 is found, the bond may be forfeited to the complainant under terms and conditions prescribed by the Commission. To enter merchandise that is the subject of a Commission exclusion order, importers must:

(i) File with CBP prior to entry a bond in the amount determined by the Commission that contains the conditions identified in the special importation and entry bond set forth in appendix B to part 113 of this chapter; and

(ii) Comply with the terms set forth in 19 CFR 210.50(d) in the event of a forfeiture of this bond.

(3) CBP shall notify each importer or consignee of articles released under bond pursuant to paragraph (b)(2) of

this section when the Commission's determination of a violation of section 337 becomes final and that entry of the articles is refused. The importer or consignee shall export or destroy the released articles under customs supervision within 30 days after the date of notification. The port director who released the articles shall assess liquidated damages in the full amount of the bond if the importer or consignee fails to export or destroy the released articles under Customs supervision within the 30-day period.

(4) In addition to the notice given to importers or consignees of articles released under bond, CBP shall provide written notice to all owners, importers or consignees of articles which are denied entry into the United States pursuant to an exclusion order that any future attempt to import such articles may result in the articles being seized and forfeited. Copies of all such notices are to be forwarded to the Executive Director, Commercial Targeting and Enforcement, Office of International Trade, at CBP Headquarters, and to the Office of The General Counsel, USITC, 500 E Street, SW., Washington, DC 20436.

(c) *Seizure and Forfeiture Orders.* (1) In addition to issuing an exclusion order under paragraph (b)(1) of this section, the Commission may issue an order providing that any article determined to be in violation of §337 be seized and forfeited to the United States. Such order may be issued if:

(i) The owner, importer, or consignee of the article previously attempted to import the article or like articles into the United States;

(ii) The article or like articles were previously denied entry into the United States by reason of an exclusion order issued under paragraph (b)(1) of this section; and

(iii) Upon such previous denial of entry, CBP had notified the owner, importer, or consignee of the article in writing of both the exclusion order and that seizure and forfeiture would result from any further attempt to import the article or like articles into the United States.

(2) Upon receipt of any seizure order issued by the Commission in accordance with this paragraph, Customs

shall immediately notify all ports of entry of the property subject to the seizure order and identify the persons notified under paragraph (b)(4) of this section.

(3) The port director in the port in which the article was seized shall issue a notice of seizure to parties known to have an interest in the seized property. All interested parties to the property shall have an opportunity to petition for relief under the provisions of 19 CFR part 171. All petitions must be filed within 30 days of the date of issuance of the notice of seizure, and failure of a claimant to petition will result in the commencement of administrative forfeiture proceedings. All petitions will be decided by the appropriate Customs officer, based upon the value of the articles under seizure.

(4) If seized articles are found to be not includable in an order for seizure and forfeiture, then the seizure and the forfeiture shall be remitted in accordance with standard Customs procedures.

(5) Forfeited merchandise shall be disposed of in accordance with the Customs laws.

(d) *Certain importations by or for the United States.* Any exclusion from entry under section 337 based on claims of United States letters patent shall not apply to articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

(e) *Importations of semiconductor chip products.* (1) In accordance with the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 *et seq.*), if the owner of a mask work which is registered with the Copyright Office seeks to have CBP deny entry to any imported semiconductor chip products which infringe his rights in such mask work, the owner must obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC), under section 337, Tariff Act of 1930, as amended (19 U.S.C.1337), excluding, importation of such products. Exclusion orders issued by the USITC are enforceable by CBP under paragraph (b) of this section. Court orders or exclusion orders issued by the USITC shall be forwarded, for enforcement purposes, to

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the Director, Border Security and Trade Compliance Division, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229.

(2) CBP shall enforce any court order or USITC exclusion order based upon a mask work registration in accordance with the terms of such order. Court orders may require either denial of entry or the seizure of violative semiconductor chip products. Forfeiture proceedings in accordance with part 162 of this chapter shall be instituted against any such products so seized.

(3) This regulation will be effective against all importers regardless of whether they have knowledge that their importations are in violation of the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 through 904).

[T.D. 79-231, 44 FR 49247, Aug. 22, 1979, as amended by T.D. 84-213, 49 FR 41167, Oct. 19, 1984; T.D. 87-132, 52 FR 39221, Oct. 21, 1987; T.D. 95-87, 60 FR 54941, Oct. 27, 1995; T.D. 99-27, 64 FR 13675, Mar. 22, 1999; T.D. 00-87, 65 FR 77815, Dec. 13, 2000; 65 FR 80497, Dec. 21, 2000; CBP Dec. 16-26, 81 FR 93014, Dec. 20, 2016]

IMMORAL ARTICLES

§ 12.40 Seizure; disposition of seized articles; reports to United States attorney.

(a) Any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, seized under section 305, Tariff Act of 1930, shall be transmitted to the United States attorney for his consideration and action.

(b) Upon the seizure of articles or matter prohibited entry by section 305, Tariff Act of 1930 (with the exception of the matter described in paragraph (a) of this section), a notice of the seizure of such articles or matter shall be sent to the consignee or addressee.

(c) When articles of the class covered by paragraph (b) of this section are of small value and no criminal intent is apparent, a blank assent to forfeiture, Customs Form 4607, shall be sent with the notice of seizure. Upon receipt of

the assent to forfeiture duly executed, the articles shall be destroyed if not needed for official use and the case closed.

(d) In the case of a repeated offender or when the facts indicate that the importation was made deliberately with intent to evade the law, the facts and evidence shall be submitted to the United States attorney for consideration of prosecution of the offender as well as an action in rem under section 305 for condemnation of the articles.

(e) All cases in which articles have been seized pursuant to 19 U.S.C. 1305(a) should be referred to the U.S. Attorney, for possible institution of condemnation proceedings, within 4 days, but in no event more than 14 days, after the date of Customs initial examination. The referral to the U.S. Attorney should be initiated simultaneously with the mailing to the importer of the seizure notice and the assent to forfeiture form. If the importer declines to execute an assent to forfeiture of the articles other than those mentioned in paragraph (a) of this section and fails to submit, within 30 days after being notified of his privilege to do so, a petition under section 618, Tariff Act of 1930 (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized articles, then the U.S. Attorney, who has already received information concerning the seizure pursuant to this paragraph, may proceed with the condemnation action.

(f) If seizure is made of books or other articles which do not contain obscene matter but contain information or advertisements relative to means of causing unlawful abortion, the procedure outlined in paragraphs (b), (c), (d), and (e) of this section shall be followed.

(g) In any case when a book is seized as being obscene and the importer declines to execute an assent to forfeiture on the ground that the book is a classic, or of recognized and established literary or scientific merit, a petition addressed to the Secretary of the Treasury with evidence to support the claim may be filed by the importer for release of the book. Mere unsupported statements or allegations will not be considered. If the ruling is favorable, release of such book shall be made only to the ultimate consignee.