



**U.S. Customs and
Border Protection**

DIS-1-OT:FD DG
2008F2638

May 6, 2008

Mr. Matt Schroeder
Federation of American Scientists
1717 K Street NW, Suite 209
Washington, DC 20036

Dear Mr. Schroeder:

This is in acknowledgement and response to your Freedom of Information Act (FOIA) request for entry documents.

A search of U.S. Customs and Border Protection (CBP) files has produced thirteen (13) pages of requested documents. Nine (9) pages of these documents were excluded in full, pursuant to 5 USC 552 (b)(4), which would disclose privileged or confidential trade secrets, commercial or financial information. Of the four (4) pages of provided documents, certain portions are exempt from disclosure pursuant to 5 USC 552 (b)(2), as they are administrative markings and are related solely to the internal administrative practices of this agency. In addition, specific sections are excepted from revelation pursuant to exemption (b)(6) & (b)(7)(C) of the FOIA, as they are names of individuals the disclosure of which would constitute an unwarranted invasion of personal privacy. Other areas are excluded because of exemption (b)(7)(E), under the FOIA, which would disclose techniques and procedures of law enforcement investigations, and (b)(4), under the FOIA, which would disclose privileged or confidential trade secrets, commercial or financial information.

If you consider the deletions to constitute a partial denial of your request for disclosure, you may appeal to the Office of International Trade, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Mint Annex 5th Floor, Washington, D.C. 20229. Both the front of the envelope and the appeal letter should contain the notation "Freedom of Information Act Appeal."

Please notate file number 2008F2638 on any future correspondence to CBP related to this request.

Sincerely,

A handwritten signature in black ink that reads "Mark Hanson".

Mark Hanson
Acting Director, FOIA Division
Office of International Trade

Enclosures

REC'D FP&F
APR 15 2005
C. & B. P.
PORTLAND, OREGON

U.S. Department of Homeland Security
Washington, DC 20229



U.S. Customs and
Border Protection

MAR 11 2005

RR:IT:PE

[REDACTED]

b2

Fines, Penalties and Forfeitures Officer
Customs and Border Protection
P.O. 55580
Portland, Oregon 97238-5580

Dear Ms. [REDACTED]

b7c
b6

This is in response to the petition dated February 19, 2004, submitted by counsel [REDACTED], seeking relief from the forfeiture of 780 pistols, 450 shotguns, and 950 pistol magazines with a domestic value of \$337,200 and a foreign value of approximately \$121,000. [REDACTED] The merchandise was seized pursuant to title 18, United States Code (U.S.C.), section 545 and title 19, United States Code, section 1595a(c)(1)(A), for its smuggling or clandestine importation to the U.S. by means of a false statement on the vessel manifest, in violation of 19 U.S.C 1584. Additionally, the merchandise was seized pursuant to 19 U.S.C. 1595a(c)(2)(B), for its importation without a DSP-61 license from the Department of State (DOS), in violation of the Arms Export Control Act (22 U.S.C. 2278) and its implementing regulations, the International Traffic in Arms Regulations (ITAR)(22 CFR Parts 120 -130). Lastly, the merchandise was seized pursuant to title 22, United States Code, section 401, for its intended exportation contrary to the ITAR.

b7c
b6
b4

b2

CIRCUMSTANCES OF THE SEIZURE

On June 27, 2003, the vessel [REDACTED] arrived at the port of Portland from Vancouver, British Columbia. The manifest was filed in the Automated Manifest System (AMS). On the manifest [REDACTED]

described as "Armas. [REDACTED] the "HTS (Harmonized Tariff Schedule) Description" area, the cargo was described as "Rainbow Trout Farmed Fresh/Chilled" under HTS 0302110010, with a value of \$64,620. [REDACTED]

b7c
b4

A review of the bill of lading and other shipping documents for the container revealed that it had departed from Shanghai, China aboard the [REDACTED]

[REDACTED] for delivery to the petitioner in San Salvador, El Salvador and that it had been scheduled to transit Canada at the port of Vancouver, for transportation to El Salvador. As noted above, the container arrived at the Port of Portland from the port of Vancouver aboard the vessel [REDACTED] which was scheduled to transit the ports of Oakland and Long Beach, California on its way to Puerto Quetzal, Guatemala for delivery of the cargo to San Salvador, El Salvador. The Chinese exporter listed on both the [REDACTED] Bill of Lading and the [REDACTED] Bill of Lading was [REDACTED] of Beijing, China, and the foreign consignee listed on both bills was the petitioner. The goods were described on the both Bills of Lading as "Armas."

64

Customs and Border Protection (CBP) officers detained the shipment pending a determination from DOS as to whether the Chinese exporter was among the foreign exporters who have been designated by DOS as subject to the import ban imposed by Executive Orders 12938 and 13094 on foreign persons determined by the Secretary of State to have engaged in activities related to the proliferation of weapons of mass destruction on or after November 16, 1990. DOS determined that [REDACTED] was one of the exporters subject to the import ban, which is administered by the Office of Foreign Assets Control (OFAC) under its Weapons of Mass Destruction (WMD) Trade Control Regulations, as set forth in 31 CFR Part 539. However, due to extenuating factors, it was decided not to pursue a WMD OFAC violation in this case.

64

Additionally, after the inspection of the shipment revealed that its cargo consisted of firearms and ammunition likely subject to the licensing restrictions of the ITAR, a licensing determination was sought from DOS. By its licensing determination dated July 8, 2003, DOS found that the pistols, the pistol magazines and the shotguns with a barrel length less than 18 inches were subject to the licensing controls of the ITAR and that they required a DSP-61 license to be temporarily imported for transit from the U.S. Inasmuch as a check with DOS determined that there was no DSP-61 or other license on file for the subject importation, the goods were placed under seizure for the ITAR violation as well as for the false manifesting of the merchandise.

STATEMENT OF THE LAW

Both 18 U.S.C. 545 and 19 U.S.C. 1595a(c)(1)(A) provide for the seizure of articles that have been stolen, smuggled or clandestinely imported or introduced into the U.S. Goods that are falsely classified on a manifest, where the correct classification would have subjected the goods to an import prohibition or restriction, are considered to have been smuggled or clandestinely imported to the U.S.

19 U.S.C. 1595a(c)(2)(B) provides for seizure of articles for which their importation or entry requires a license, permit, or other authorization from an agency of the U.S. Government and the merchandise is not accompanied by

Such license, permit or authorization. The temporary importation, for transit from the U.S. to a third country, of articles subject to the licensing restrictions of the ITAR requires a DOS DSP-61 license.

22 U.S.C. 401 provides for seizure of any articles exported, -attempted to be exported or intended to be exported from the U.S. contrary to law. A temporary importation for the transit of ITAR-restricted goods that are not covered by a DSP-61 license is, by its very nature, an intended exportation contrary to law.

PETITIONER'S CLAIMS

Petitioner states that it is the consignee and owner of the goods, which it purchased from [REDACTED] Petitioner claims that its ownership interest arises from its acquiring title to the goods when they were placed aboard the vessel that transported the goods from Shanghai, and from its payment for the goods [REDACTED]

b4

b4

Further, the petitioner claims that it is a lawful arms and weapons importer in El Salvador and that it obtained the necessary export and import permits from the Chinese and El Salvadoran authorities for the transportation of the merchandise from China to El Salvador. Petitioner states that it was aware that the movement of the merchandise through the U.S. required a U.S. Government permit and that for this reason it instructed [REDACTED] to arrange for shipment through a non-U.S. port. Petitioner claims that it was advised by that company that the vessel exporting the goods would be routed through Vancouver, B.C. and Guatemala for shipment to El Salvador.

b4

Lastly, the petitioner claims that it had no knowledge of the mislabeling of the cargo as fresh fish. Petitioner states that all the documents it provided to the exporter for the shipment referenced a cargo of arms and ammunition.

RESPONSES TO PETITIONER'S CLAIMS

The evidence in the case record establishes that the petitioner is the lawful owner of the seized goods. Accordingly, its claim to the merchandise is superior to that of [REDACTED] which also filed a petition seeking relief from the forfeiture of the merchandise.

b4

There is no evidence in the record suggesting that the petitioner knew of or was involved in the illegal transit of the goods from the U.S. However, this does not exculpate the petitioner from liability for the subject violation inasmuch as the seizure in this case was an *in rem* action that is not dependent upon a finding of knowledge or culpability of the part of the petitioner. However, the petitioner's

lack of knowledge or involvement in the violation may be considered in any decision to grant relief from the forfeiture.

FINDINGS AND DECISION

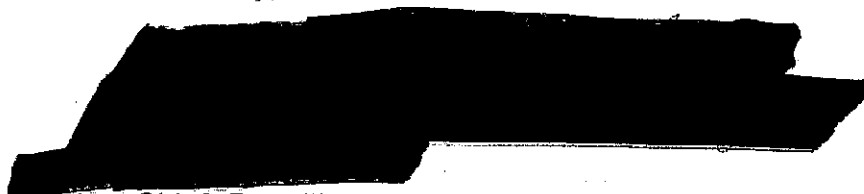
We find that the merchandise was properly seized under the laws and regulations cited in the seizure notice and in this decision. Further, we find that this was the first violation of this nature involving the petitioner company. We do not find any aggravating factors attributable to the petitioner's actions.

For first violations of the provisions of 19 U.S.C. 1595a(c), where there are no aggravating factors, the forfeiture may be remitted upon payment of an amount between 10 and 30 percent of the value of the seized merchandise, subject to any conditions imposed for the granting of this relief. In view of all the facts and circumstances of this case, it is our decision to remit the forfeiture of the articles upon payment of \$24,000, an amount equal to 20 percent of their approximate dutiable value, conditioned upon (1) payment of all accrued storage charges for the merchandise; (2) submission of a Hold Harmless Agreement; (3) the procurement of a DOS temporary import license (DSP-61) or a permanent export license (DSP-5) for the articles that are listed on the U.S. Munitions List (USML) and thus subject to the licensing restrictions of the ITAR; and (4) the exportation of the merchandise under CBP supervision.

In the event that the petitioner does not procure a DOS license for the USML articles within 60 days of the date of your notification of this decision to the petitioner, these articles shall be referred for administrative forfeiture proceedings. In that case, the forfeiture of the non-USML articles (the shotguns with a barrel length of 18 inches or more) may be remitted upon payment of 20 of their dutiable value, provided that (1) accrued storage charges for these shotguns is submitted; (2) a Hold Harmless Agreement is executed for these articles; and (3) they are exported under CBP supervision.

Please notify the petitioner, through counsel, of this decision. You may enclose a copy of this letter with your notification.

Sincerely,

A large black rectangular redaction covers the signature area of the letter.

Chief, Penalties Branch

b7c
b6