



Legal Alert

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Companies Beware – US Court Decision Expands Scope of Customs Penalty Provisions for Individuals who “Introduce” Goods into US Commerce

A US court has ruled that a company's compliance officer, business owners and others can now be held personally liable under the customs penalty statute¹ for fraudulently or negligently providing information on their company's import transactions. **Under this decision, import managers and compliance personnel can now be held personally liable in circumstances other than fraud for imports that violate US custom laws. This includes persons working for Canadian companies that are importing into the United States.**

In *United States v. Trek Leather Inc. and Harish Shadadpuri*, (*Trek Leather*) the US Court of Appeals for the Federal Circuit sitting *en banc* found a **corporate officer** of an importer of record **personally liable** for gross negligence penalties where the importer understated the value of the goods.

In its decision, the Court focused on the potential liability of those who “introduce” goods into US commerce – potentially anyone who creates documents or facilitates documents being used to enter good into US commerce.²

In the case, the importer of record (*Trek Leather*) failed to include fabric assists in the price declared for men's suits. Under customs law, the cost of fabric assists provided to foreign manufacturers which are then incorporated into imported suits are required to be included in the price actually paid or payable. US Customs and Border Protection (CBP) determined that the entry documentation failed to include the costs of the assists in the price of the suits, which lowered the amount of duty payable to CBP by *Trek Leather*³. Mr. Harish Shadadpuri was the president and sole owner of *Trek Leather*. Mr. Shadadpuri argued that he could not be held personally liable for under-declaring the value of the goods because he did not serve as the importer of record.

In its *en banc* decision, the Court reversed its previous August 2013 panel decision and ruled that the customs penalty statute applies to any person, regardless of whether or not they are an “importer of record.” The Court then found Mr. Shadadpuri was grossly negligent in “introducing” goods into US commerce when he transferred ownership of the goods to one of his companies acting as the “importer of record” (from another one of his other companies) and furnished commercial invoices understating the value of the goods to his customs broker.

¹19 U.S.C. § 1592(a)

²The Court specifically declined to address the issue of whether the violations occurred for those who “enter” goods, such as the “importer of record” or broker, because prior case law found that the term “introduce” covered a broader range of conduct, including the actions at issue in the case.

³Mr. Shadadpuri was involved in a similar investigation earlier, and conceded that he knew *Trek Leather* should have included the value of the assists.



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Of critical importance, the Court emphasized that its decision “does not require any piercing of the corporate veil” and that Mr. Shadadpuri is not being held liable “because of his prominent officer or owner status” but because he personally violated the statute.

Potential Issues for Compliance Professionals – or Individuals associated with Import Compliance

The decision creates an expansive new category of individuals subject to negligence and gross negligence penalties under the customs penalty statute and regulations. This means that importers are likely to face a whole new array of risks. Some of the more apparent risks include:

- ***While the potential scope of this decision is still to be determined, import managers and compliance personnel now are certainly at a greater risk under this decision of being held personally liable for “introducing” merchandise contrary to US customs laws.***
- ***While difficult to predict with certainty regarding the effect on future penalty cases, we expect Customs to be invigorated by the decision as it provides the agency with additional grounds to penalize non-compliant importers.***
- ***Owners of smaller businesses or closely held corporations, who are more involved in sourcing decisions and shipping arrangements, are particularly at risk.***
- ***Persons who sign documents (such as NAFTA certificates of origin) are likely to be affected by the case.***

Importers will also have to consider how to address the potential effect of this decision in other customs proceedings, such as customs enforcement actions and focused assessments (audits), and the implications under other laws, such as the False Claims Act (FCA).

While recognizing that companies are highly focused on containing costs, we strongly recommend now more than ever that if your company is importing merchandise into the US that you take stock of your current import processes and procedures and make sure your company has adequate internal controls in place regarding your customs and import operations.

Arent Fox customs lawyers would be glad to discuss the implications of this decision with senior executives and compliance officers at your company and offer suggestions on ways to protect against its consequences.

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