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Federal Circuit Decision Underscores the Importance of Customs Compliance for All Parties to an Import Transaction

A decision issued last week by the U.S. Court of Appeals for the Federal Circuit in *United States v. Trek Leather, Inc.* has shaken fundamental assumptions held by many U.S. importers and their business partners (including overseas manufacturers and exporters) with respect to liability under the U.S. customs laws. The decision also makes it more likely that U.S. Customs and Border Protection (CBP) will seek to hold individual officers, directors, employees, partners and shareholders of such companies liable for customs violations. While the extent to which the court's decision will affect current and future enforcement actions undertaken by CBP remains to be seen, the potentially far-reaching implications of the decision warrant close attention from anyone involved directly or indirectly with U.S. imports.

The chief customs penalty statute — 19 U.S.C. § 1592 — penalizes negligence, gross negligence, and fraud in connection with an import transaction. Normally, CBP will hold principally liable under Section 1592 the party who is the owner, purchaser or consignee of imported merchandise and who completes the entry paperwork (*i.e.*, the "importer of record"). Indeed, this practice is so well-established that many in the importing community have taken the position that *only* importers of record can ever be liable for customs violations (absent some evidence that another party has aided or abetted the violation).

The Federal Circuit's holding in *Trek Leather* changes all that. The case arises out of charges filed by CBP under Section 1592 against Trek Leather Inc. (an importer of record) and Trek Leather's president and sole shareholder, Mr. Harish Shadadpuri. CBP alleged that through gross negligence, Mr. Shadadpuri and Trek Leather significantly undervalued imported men's suits in documentation filed with CBP by failing to report the value of certain fabric that was supplied by Mr. Shadadpuri to the overseas manufacturer of the suits. The undervaluation caused Trek Leather and Mr. Shadadpuri to pay far less in customs duties than otherwise would have been due.

In proceedings before the U.S. Court of International Trade, the defendants acknowledged Trek Leather's negligence but claimed that Mr. Shadadpuri could not be liable under Section 1592 because he did not enter the merchandise as the importer of record. On appeal, two of three Federal Circuit judges agreed, holding that because he was not an importer of record or agent of the importer of record, Mr. Shadadpuri was not subject to Section 1592.

Following a request by CBP for rehearing *en banc*, a unanimous 10-judge panel of the Federal Circuit overturned that decision, soundly rejecting the claim that only importers of record can be liable under Section 1592. Drawing on the text of Section 1592 as well as legislative history and a Supreme Court decision dating back to the early 20th century, the Federal Circuit found that Congress clearly intended to include more than importers of record within the scope of Section 1592. The Federal Circuit found that besides the importer of record, Section 1592 also applies to "any person" who introduces or attempts to introduce merchandise into the United States through negligence, gross

negligence or fraud. Accordingly, because Mr. Shadadpuri acted to introduce undervalued merchandise into the United States through gross negligence, he also was liable for penalties under Section 1592.

The Federal Circuit's *en banc* decision in *Trek Leather* is groundbreaking and potentially very far-reaching. It serves as clear notice that any person who is involved in an import transaction — even if that person is not present in the United States — is now potentially on the hook for a violation of Section 1592. Indeed, the *en banc* panel was careful to emphasize that liability under Section 1592 can arise from actions taken outside the United States, including the actions of an overseas supplier or intermediary. Moreover, in the court's view, any individual involved in the introduction of merchandise into the United States through negligence, gross negligence or fraud — such as a shareholder and corporate officer, like Mr. Shadadpuri — can be individually liable without the need to "pierce the corporate veil."[1]

Given its significance, it is conceivable that in the coming months the Federal Circuit's decision will be appealed to the Supreme Court. U.S. importers also may pursue legislation to overturn *Trek Leather* and narrow the scope of Section 1592 as interpreted by the Federal Circuit. The likelihood of success of either of these options is very much in doubt at the present time, however. Accordingly, all companies engaged in import transactions (including overseas manufacturers and exporters) and their shareholders, partners, officers, directors and employees should carefully review their potential liability under Section 1592 and implement appropriate customs compliance procedures.

1 Whether this also extends to a person acting within the scope of his or her employment within a company remains an unanswered question.