

importation of counterfeit trademark goods, a new § 133.25 is created to implement the provisions of section 526(f).

Comments

Before adopting these interim regulatory amendments as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd floor, Washington, DC.

Inapplicability of Notice and Public Comment, Delayed Effective Date Requirement, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to 5 U.S.C. 553(b)(B), it has been determined that it would be contrary to the public interest to issue this rule with notice and public procedures because the rule implements statutory provisions enacted to protect trademark owners and the public from imported merchandise bearing a counterfeit American trademark. For this reason, and pursuant to 5 U.S.C. 553(d)(3), good cause exists to make this rule effective immediately without a 30-day delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 133

Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names, Unfair competition.

Amendments to the Regulations

For the reasons stated above, part 133 of the Customs Regulations (19 CFR part 133), is amended on an interim basis as set forth below:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 continues to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

2. A new § 133.25 is added to read as follows:

§ 133.25 Civil fines for those involved in the importation of counterfeit trademark goods.

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit American trademark as follows:

(a) *First violation.* For the first seizure of such merchandise, the fine imposed shall not be more than the domestic value of the merchandise, (*see*, § 162.43(a) of this chapter), as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

(b) *Second and subsequent violations.* For the second and any subsequent seizure of such merchandise, the fine imposed shall not be more than twice the value of the merchandise as if it had been genuine, as determined by the manufacturer's suggested retail price of the merchandise at the time of seizure.

3. Section 133.52 is amended by revising paragraph (c) as follows:

§ 133.52 Disposition of forfeited merchandise.

* * * * *

(c) *Articles bearing a counterfeit trademark.* Merchandise forfeited for violation of the trademark laws shall be destroyed, unless it is determined that the merchandise is not unsafe or a hazard to health and the Commissioner of Customs or his designee has the written consent of the U.S. trademark owner, in which case the Commissioner of Customs or his designee may dispose of the merchandise, after obliteration of the trademark, where feasible, by:

(1) Delivery to any Federal, State, or local government agency that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(2) Gift to any charitable institution that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(3) Sale at public auction, if more than 90 days has passed since the forfeiture and Customs has determined that no need for the merchandise has been

established under paragraph (c)(1) or (c)(2) of this section.

George J. Weise,
Commissioner of Customs.
Approved: July 3, 1997.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 97-30048 Filed 11-14-97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF-393; 97-455]

RIN: 1512-AB62

Removal of Restrictions on Importation of Defense Articles From Specified New Independent States of the Former Soviet Union and Yugoslavia and To Amend the Term "Military Firearms and Ammunition"

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule removes the following States of the former Soviet Union from the list of countries from which the import of defense articles into the United States is proscribed: Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, and Uzbekistan. The rule also restricts the importation of certain firearms and ammunition located or manufactured in any of the above countries or previously manufactured in the Soviet Union to conform to limitations contained in an agreement between the United States and the Russian Federation and in accordance with advice from the Department of State. The final rule specifies the firearms that are allowed to be imported from these countries as well as ammunition that may not be imported from these countries. The final rule also revises the list of proscribed countries to reflect the lifting of the embargo on importation of defense articles and defense services from the states of the former Yugoslavia, except for Serbia and Montenegro. Finally, the regulations are being revised to require applications to import parts of military firearms or ammunition of United States manufacture to be submitted with statements certifying that the parts were not furnished to a foreign government under a foreign assistance or sales program of the United States.

DATES: The amendments to 27 CFR 47.52 are effective November 17, 1997. The amendment to 27 CFR 47.52(c) was effective December 20, 1996.

Applicability dates. Removal of the Russian Federation from the list of proscribed countries was applicable April 5, 1996. Removal of Georgia, Kazakstan, Kyrgyzstan, Moldova, Turkmenistan, and Uzbekistan was applicable August 12, 1996. Removal of Ukraine was applicable September 10, 1996. Lifting of the embargo on importation of defense articles, other than heavy weapons, ammunition therefor, mines, military aircraft and helicopters from a number of the states of the country formerly known as Yugoslavia was applicable March 14, 1996. Lifting of restrictions on the importation of the remainder of defense articles and defense services from a number of the states of the former Yugoslavia was applicable July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Mendoza, Specialist, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927-8320.

SUPPLEMENTARY INFORMATION: The Arms Export Control Act of 1976 (AECA), 22 U.S.C. 2778, gives the President of the United States the authority to control the import and export of defense articles and defense services.

Executive Order 11958 of January 18, 1977, as amended (42 FR 4311), delegated the authority to control exports of defense articles and defense services to the Secretary of State. The Executive Order also delegated to the Secretary of the Treasury the authority to control the import of such articles and services. However, as stated in 27 CFR 47.55, ATF is guided by the views of the Departments of State and Defense on matters affecting world peace and the external security and foreign policy of the United States.

New Independent States of the Former Soviet Union

By letter dated April 5, 1996, the Secretary of State advised the Director, ATF, that, under the authority of Section 38 of the AECA it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services destined for or originating in the Russian Federation (Russia). The State Department requested that the Director implement this decision immediately with respect to his authority over imports under Section 38

of the AECA and amend the regulation at 27 CFR 47.52(a) to reflect this change in foreign policy. On April 29, 1996, ATF published in the **Federal Register** a Statement of Policy announcing this change in foreign policy (Notice No. 821, 61 FR 18678).

The April 5, 1996, letter also informed ATF that an agreement between the United States and the Russian Federation on exports of firearms and ammunition from the Russian Federation to the United States (the Agreement) was signed on April 3, 1996, and entered into force on that date. The letter stated that carrying out such an agreement and keeping out unacceptable types of munitions from the United States are United States foreign policy concerns. On this basis, the State Department advised the Department of the Treasury to exercise its authority under the AECA by denying applications to import firearms and ammunition located or manufactured in Russia or previously manufactured in the Soviet Union that would be inconsistent with the Agreement. The State Department advised Treasury that the foregoing did not apply to conditional imports of firearms and ammunition that would serve as samples for purposes of determining whether the items are of a type authorized for importation under the Agreement.

The Agreement provides that Russia shall not allow the exportation to the United States of firearms other than those specified in Annex A to the Agreement and will prohibit exportation to the United States of ammunition specified in Annex B to the Agreement. The Agreement also provides that new types of firearms and ammunition manufactured after February 9, 1996, may not be exported by Russia under the Agreement unless the parties agree in writing to amend the Agreement accordingly. The Agreement, including Annexes A and B, was published in its entirety in Notice No. 821.

By letter dated June 24, 1996, the Secretary of State requested that ATF deny applications to import firearms located or manufactured in the non-Russian newly independent states of the former Soviet Union (NIS) that are not listed in Annex A to the Agreement, once those countries have been removed from the proscribed countries list. The letter further requested that ATF deny applications to import ammunition located or manufactured in the non-Russian NIS that is listed in Annex B to the Agreement, once those countries have been removed from the proscribed countries list. The letter stated that, for

purposes of this request, the non-Russian NIS should be considered as Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. The letter advised that the State Department would notify ATF when a decision had been made to remove from the list of proscribed countries any of the NIS listed above.

By letter dated August 12, 1996, the Secretary of State notified the Director, ATF, that the State Department had removed Georgia, Kazakstan, Kyrgyzstan, Moldova, Turkmenistan, and Uzbekistan from the list of proscribed countries in 22 CFR Part 126. The letter stated that it is no longer the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in these countries, except as provided in the June 24, 1996, letter. Consistent with ATF's authority over the importation of defense articles and defense services, the Secretary of State requested that ATF amend the list of proscribed countries in 27 CFR Part 47 to reflect this change in foreign policy.

By letter dated September 10, 1996, the Secretary of State advised the Director, ATF, that the Department of State had removed Ukraine from the list of proscribed countries in 22 CFR Part 126. The letter stated that it is no longer the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in Ukraine, except as provided in the June 24, 1996, letter. The letter requested that ATF exercise its authority over the importation of defense articles and defense services and amend 27 CFR Part 47 to reflect this change in foreign policy.

The regulations in 27 CFR 47.52 have been amended to remove all the above NIS from the list of countries from which defense articles and defense services may not be imported. The regulations have also been amended to indicate that firearms may be imported from these countries only if they are listed in Annex A to the Agreement and that ammunition may be imported only if it is not listed in Annex B to the Agreement. The regulations also provide that firearms and ammunition manufactured in the NIS may not be imported from any location unless they are listed in Annex A, in the case of firearms, or not listed in Annex B, in the case of ammunition.

Importation of Defense Articles and Defense Services From States of the Former Yugoslavia

The States of Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia (Serbia and Montenegro), Macedonia, and Slovenia were created with the dissolution of Yugoslavia.

Effective March 14, 1996, the Department of State announced a partial lifting of the suspension of licenses and approvals to export or otherwise transfer defense articles and defense services to the states of the former Yugoslavia, except Serbia and Montenegro, pursuant to section 38 of the AECA. The Department of State advised ATF that the suspension remained in place for all states of the former Yugoslavia with regard to importation of heavy weapons, ammunition therefor, mines, military aircraft and helicopters.

The Department of State subsequently advised ATF that, effective July 12, 1996, the remainder of the restrictions on importation of defense articles and defense services from the states of the former Yugoslavia, except Serbia and Montenegro, had been lifted (See 61 FR 36625, July 12, 1996). The State Department amended its regulations concerning exports of defense articles and defense services and requested that ATF amend the regulations in 27 CFR Part 47 to reflect this change in foreign policy.

The list of proscribed countries in 27 CFR 47.52(a) is being revised to replace the listing of Yugoslavia with the names of the former states still subject to import restrictions, i.e., the Federal Republic of Yugoslavia (Serbia and Montenegro). Accordingly, ATF will approve applications to import defense articles from Bosnia and Herzegovina, Croatia, Macedonia, and Slovenia.

Importation of Parts of Military Firearms or Ammunition of United States Manufacture

By letter dated December 20, 1996, the Department of State requested that ATF amend the regulations in 27 CFR 47.57(c) to require that applications to import parts of military firearms or ammunition of United States manufacture include statements certifying that the parts were not furnished to a foreign government under a foreign assistance or sales program of the United States. The letter advised ATF that the Department of State believes that the importation of such parts must be subject to their review to be consistent with the law and Department of State policy.

The regulations in 27 CFR 47.57(c) are being revised to delete the current

exemption for component parts of firearms and ammunition.

Executive Order 12866

Because the amendments to 27 CFR Part 47 involve a foreign affairs function of the United States, Executive Order 12866 does not apply.

Administrative Procedure Act

Under 27 CFR 47.54, amendments made to 27 CFR Part 47 are excluded from the rulemaking provisions of 5 U.S.C. 553 because this Part involves a foreign affairs function of the United States. Accordingly, it is not necessary to issue this Treasury Decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitations in 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law. 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Compliance With 5 U.S.C. Chapter 8

In accordance with 5 U.S.C. 808(2), ATF has found that, consistent with guidance from the Department of State and for reasons of the foreign policy of the United States, notice and public procedure under 5 U.S.C. 801 are unnecessary, impracticable, and contrary to the public interest.

Drafting Information

The principal author of this document is Scott Mendoza, Specialist, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedure, Arms and munitions, Arms control, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

Authority and Issuance

Accordingly, 27 CFR Part 47 is amended as follows:

PART 47—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

Paragraph 1. The authority citation for Part 47 continues to read as follows:

Authority: 22 U.S.C. 2778.

Par. 2. Section 47.52 is amended by revising paragraph (a); by redesignating paragraphs (b), (c), and (d) as paragraphs (d), (e), and (f); by removing "paragraph (c)" in the first sentence of redesignated paragraph (f) and adding in its place "paragraph (e)"; and by adding new paragraphs (b) and (c) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy applies to Cuba, Iran, Iraq, Libya, Mongolia, North Korea, Sudan, Syria, Vietnam, and some of the states that comprised the former Soviet Union (Armenia, Azerbaijan, Belarus, and Tajikistan). This policy applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Burma, China, the Federal Republic of Yugoslavia (Serbia and Montenegro), Haiti, Liberia, Rwanda, Somalia, Sudan, UNITA (Angola), and Zaire). It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.

Note: Changes in foreign policy may result in additions to and deletions from the above list of countries. The ATF will publish changes to this list in the **Federal Register**. Contact the Firearms and Explosives Imports Branch at (202) 927-8320 for current information.

(b) Notwithstanding paragraph (a) of this section, the Director shall deny applications to import into the United States the following firearms and ammunition:

- (1) Any firearm located or manufactured in Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, or Uzbekistan, and any firearm previously manufactured in the Soviet Union, that is not one of the models listed below:
 - (i) Pistols/Revolvers:
 - (A) German Model P08 Pistol.
 - (B) IZH 34M, .22 caliber Target Pistol.
 - (C) IZH 35M, .22 caliber Target Pistol.
 - (D) Mauser Model 1896 Pistol.
 - (E) MC-57-1 Pistol.
 - (F) MC-1-5 Pistol.
 - (G) Polish Vis Model 35 Pistol.
 - (H) Soviet Nagant Revolver.
 - (I) TOZ 35, .22 caliber Target Pistol.

- (ii) Rifles:
 - (A) BARS-4 Bolt Action Carbine.
 - (B) Biathlon Target Rifle, .22LR caliber.
 - (C) British Enfield Rifle.
 - (D) CM2, .22 caliber Target Rifle (also known as SM2, 22 caliber).
 - (E) German Model 98K Rifle.
 - (F) German Model G41 Rifle.
 - (G) German Model G43 Rifle.
 - (H) IZH-94.
 - (I) LOS-7 Bolt Action Rifle.
 - (J) MC-7-07.
 - (K) MC-18-3.
 - (L) MC-19-07.
 - (M) MC-105-01.
 - (N) MC-112-02.
 - (O) MC-113-02.
 - (P) MC-115-1.
 - (Q) MC-125/127.
 - (R) MC-126.
 - (S) MC-128.
 - (T) Saiga Rifle.
 - (U) Soviet Model 38 Carbine.
 - (V) Soviet Model 44 Carbine.
 - (W) Soviet Model 91/30 Rifle.
 - (X) TOZ 18, .22 caliber Bolt Action Rifle.
 - (Y) TOZ 55.
 - (Z) TOZ 78.
 - (AA) Ural Target Rifle, .22LR caliber.
 - (BB) VEPR Rifle.
 - (CC) Winchester Model 1895, Russian Model Rifle;

(2) Ammunition located or manufactured in Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, or Uzbekistan, and ammunition previously manufactured in the Soviet Union, that is 7.62X25mm caliber (also known as 7.63X25mm caliber or .30 Mauser); or

(3) A type of firearm the manufacture of which began after February 9, 1996.

(c) The provisions of paragraph (b) of this section shall not affect the fulfillment of contracts with respect to firearms or ammunition entered or withdrawn from warehouse for consumption in the United States on or before February 9, 1996.

* * * * *

Par. 3. Section 47.57(c) is amended by removing the last sentence.

Signed: August 22, 1997.

John W. Magaw,
Director.

Approved: August 29, 1997.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary,
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 97-29595 Filed 11-14-97; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

RIN 0651-AA80

Changes to Patent Practice and Procedure; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The Patent and Trademark Office (PTO) published a notice of final rulemaking entitled "Changes to Patent Practice and Procedure" in the **Federal Register** of October 10, 1997 (62 FR 53131). This document clarifies some of the comments, corrects a typographical error, and removes an incorrect paragraph.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein or Robert W. Bahr, Senior Legal Advisors, by telephone at (703) 305-9285; or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231 marked to the attention of Mr. Bernstein; or by facsimile to (703) 308-6916.

SUPPLEMENTARY INFORMATION: The PTO published a notice of final rulemaking entitled "Changes to Patent Practice and Procedure" in the **Federal Register** of October 10, 1997 (62 FR 53131). The comments on the changes to 37 CFR 1.16, 1.121, and 1.193 contained errors. In addition, the amendment to 37 CFR 1.17(q) contained a typographical error and the amendment to 37 CFR 1.121(a)(4) should have been withdrawn. This document clarifies the comments, corrects the typographical error, and removes an incorrect paragraph.

In the Changes to Patent Practice and Procedure notice of final rulemaking that was published in the **Federal Register** of October 10, 1997 (62 FR 53131), make the following changes:

1. On page 53134, second column, lines 7-10, delete the following sentence:

Section 1.16 is amended to add new paragraphs (m) and (n) including the unassociated text following paragraphs (d) and (l).

2. On page 53154, first column, lines 6-10, change the sentence—

The ability to provide directions to the Office for the handwritten deletion of five words or less for each claim does not encompass deletion of equations, charts or other non-word material.

to—

An equation, chart or other non-word material should not be amended by an instruction to delete (or add) only a part of the equation, chart, or non-word material. Rather, it should be amended by an instruction to delete the entire equation, chart, or non-word material and to add in its place the equation, chart or other non-word material to be substituted for the material that was deleted.

3. On page 53154, first column, lines 29-36, delete the following paragraph:

Paragraph (a)(4) of § 1.121 requires that any amendment presented in a substitute specification must be presented under the provision of this section either prior to or concurrent with the submission of the substitute specification. The paragraph contains material from canceled § 1.115.

4. On page 53168, second column, lines 8-12, change the sentences—

Thus, the Office does not consider such a rejection to constitute a "new ground of rejection" within the meaning of § 1.193(b). Nevertheless, § 1.193(b)(2) * * *

to—

Thus, the Office does not consider such a rejection to constitute a "new ground of rejection" within the meaning of § 1.193(a). Nevertheless, § 1.193(a)(2) * * *

§ 1.17 [Corrected]

5. Section 1.17 on page 53183, first column, correct paragraph (q) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(q) For filing a petition to the Commissioner under a section listed below which refers to this paragraph—50.00.

§ 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application.

§ 1.48—for correction of inventorship in a provisional application.

§ 1.53—to accord a provisional application a filing date or to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c).

* * * * *

6. Section 1.121 on page 53193, first column, correct paragraph (a)(4) to read as follows:

§ 1.121 Manner of making amendments.

(a) * * *

(4) [Reserved]

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