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What? Did the CIT Say THAT?

On July 24, 2015, the U.S. Court of International Trade (CIT) issued an opinion in the case of *United States v. Horizon Products International, Inc.* (Court No. 14-00104).

The importer was able to save about $120,000 in duties on entries of plywood entered duty-free when an ad valorem rate of 8% should have been collected by CBP. The surety paid $50,000, so the importer still owed around $70,000. In addition to the unpaid duties, plus pre-judgment interest, CBP wanted to assess a penalty of an additional $324,540.

Before trial, CBP would have accepted $85,000 as a mitigated penalty amount, if the importer paid the full amount of the duties still owed, within 60 days of the CBP mitigation decision. The importer then made an offer in compromise of the duties to be paid in two installments and $1,000 within the 60 days.

Ultimately, the importer had paid nothing and CBP took Horizon to court.

In the July 24 decision, the Court ordered the importer to pay the duty and interest, but **NOT** the penalty! Horizon argued that it had used a licensed Customs broker to clear the goods which was in the exercise of *reasonable care* and therefore was NOT subject to a penalty.

That's what the Customs Modernization Act and its legislative history was all about--REASONABLE CARE. The importer must still pay the correct duty, but if it exercised reasonable care, penalties should be off the table.

In the "word" of Homer Simpson: "Whooo-hooo!"

But before anyone cracks open the Champagne, this is a case where CBP most likely will be compelled to appeal. As much as the CIT had a sound basis for deciding in favor of the importer on the penalty portion of the case, the *Trek Leather* case once again comes to mind.

There, the CIT had held that the sole corporate officer and stockholder of a corporation was NOT personally liable in addition to the corporation for duties and penalties. On appeal the Court of Appeals for the Federal Circuit (CAFC) reversed the CIT, holding that statute made ANY PERSON liable for a violation of 19 U.S.C. § 1592. There was an uproar from the trade, with import departments everywhere on edge, but the U.S. Supreme Court refused to hear the case.

Where the CAFC in *Trek Leather* found the officer liable IN ADDITION to the corporation, I wonder how it could find the corporation NOT liable in the *Horizon* case.

BTW--*Trek Leather* didn't re-write the statute. The "no person" language was always there, and it has been interpreted that way in other instances.

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