

*What Every Member of the
Trade Community Should Know About:*

CAVIAR



AN INFORMED COMPLIANCE PUBLICATION

MARCH 2008

U.S. CUSTOMS and BORDER PROTECTION

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division of Regulations and Rulings is entitled "CAVIAR". It provides guidance regarding the classification of these items. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Executive Director, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Sandra L. Bell
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Office of International Trade

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WHAT CAVIAR IS

Caviar is the eggs or roe of sturgeon preserved with salt. It is prepared by removing the egg masses from freshly caught fish and passing them carefully through a fine mesh screen to separate the eggs and remove extraneous bits of tissue and fat. At the same time, 4-6 percent salt is added to preserve the eggs and bring out the flavor. Most caviar is produced in Russia and Iran from fish taken from the Caspian Sea, the Black Sea, and the Sea of Azov.

Caviar is graded according to the size of the eggs and the manner of processing. The grades are named for the types of sturgeon from which the eggs are taken. The species of sturgeon (Family Acipenseridae) that produce caviar are, in order of size, beluga, osetra, and sevruga.

Lesser grades of caviar, made from broken or immature eggs, are more heavily salted and compressed. This payusnaya caviar (pressed caviar) is preferred by some because of its more intense flavor. Payusnaya is a coarser product, which consists mostly of roe that is premature or damaged in the sieving process. It is more heavily salted (10 percent), pressed in bulk, and shipped for canning elsewhere.

THE STURGEON

Sturgeons are fish of the Family Acipenseridae. The toothless sturgeon is one of the few surviving bony fish (the bones are soft and cartilaginous) which have retained their prehistoric appearance. Because their unique skeletal structure has distinct longitudinal bony plates on the outside, they have no bones in the flesh - a characteristic that gourmets welcome.

There are twenty-four existing sturgeon species worldwide. Five of them live in the Caspian Sea, and only three supply caviar. The three species of sturgeon that supply caviar are the beluga, the osetra, and the sevruga. These three give us 90 percent of the world's production.

TYPES OF CAVIAR

A) Beluga (*Huso huso*)

The beluga is the largest sturgeon and the only predator in the family. It is so rare that the annual beluga catch does not exceed 100 units. The beluga is strong, vigorous, large-mouthed, and nomadic, following its prey, shoals of whitefish. Beluga caviar, the largest, is light to dark gray. It is highly valued for its large granules (coarse roe) and delicate skin.

B) Osetra (*Acipenser gueldenstaedtii colchicus*) - also known as asetra, oscetra, ossetra, and ossetrova

This medium-sized sturgeon probes the sea bed with a projecting snout. The snout is elongate and there are four barbels on its lower surface. It is equipped to vacuum up plants and small forms of sea life.

Osetra caviar is dark brown-gray to golden. It is the only variety of caviar with a unique nut flavor.

C) Sevruga (*Acipenser stellatus*)

The sevruga is small, and has a pointed snout with an upward tilt. The diamond-shaped exoskeletal plates are the most distinct in this species of sturgeon.

Sevruga caviar, the smallest, is greenish black and fine-grained.

HOW CAVIAR IS GRADED

The factors that are considered in the grading of caviar are the uniformity and consistency of the grain, the size, color, fragrance, flavor, the gleam, firmness and vulnerability of the roe skin.

A) Grade 1

Grade 1 caviar is caviar that ideally combines all properties; it must be firm, large grained, delicate, intact, of fine color and flavor.

B) Grade 2

Grade 2 caviar is also fresh caviar with normal grain size, very good color and fine flavor.

C) Pressed Caviar

In this grade, external effect caused the fracture of more than 35 percent of the roe skins before it was removed from the fish. Therefore, this caviar is treated in a different manner than grade 1 and grade 2 caviar. It consists of a roe blend from the osetra and sevruga. This blended roe, usually milky and soft, is heated to 38 degrees Centigrade in a saline solution and stirred until it has absorbed salt and regains its natural color. Then, it is cast into "talees", fabric pouches, in which it is pressed out to remove excess salt and oil.

Pressed caviar contains four times more roe than fresh caviar of the same weight. It is drier, spreadable, and it is also considered to be a delicacy. Because it takes four pounds of fresh caviar to prepare one pound of pressed, the resulting black paste has a highly concentrated flavor. The strong, sharp taste is favored by some gourmets.

Summary of Grading for Caviar

Beluga Caviar

Grade 1

Large grain. Absolute top quality. In this category, the following additional color criteria apply:

000 light gray
00 medium gray
0 dark gray

Grade 2

Smaller grain. Medium to light gray.

Osetra Caviar

Grade 1

In this quality, osetra is distinguished by three colors:

Royal Caviar: Gold The rarest and most coveted caviar (general yield from osetra is 1:1,000)

Color A: gray gold

Color B: dark gray

Grade 2

Smaller grain. Medium gray.

Sevruga Caviar

Grade 1

Dark gray to light gray

Grade 2

Smaller grain. Dark gray

Pressed Caviar

PREPARATION OF CAVIAR

Fresh-grained caviar is prepared from the full roe of the female sturgeon. The sturgeons are caught in nets and taken back to the fishery laboratory alive. There they are clubbed and anesthetized, not killed, and the egg pockets are emptied. The fishermen carefully anesthetize the fish by hitting them at a specific spot below the head. The roe must be taken while the fish are still alive. If the fish experience the stress of death, they release a chemical into the eggs that spoils the caviar by making it bitter.

When beluga roe is taken from the fish to make the highest graded caviar, it is processed manually. The fish are placed on a coarse mesh screen spread across a wooden tub. The roe is removed by splitting the underside of the sturgeon with a sharp knife. Then the roe bags (filmy sacs containing the eggs) are broken by whipping them with birch switches. The freed roe is then passed over screens with varying-sized mesh to grade the eggs according to size. The roe is rubbed through the screens with the palm of the hand for optimum control. The process also separates the eggs from binding tissue.

During the process, the eggs drop into a tub below the mesh screens. After a portion of the eggs is collected in the tub, it is transferred to a bucket and the process is repeated. Considerable care must be taken in rubbing the eggs through the screens, since bruising them results in a lower grade of caviar.

When all of the eggs have been collected, they are put into a tub and dry salt is added. The salt is thoroughly mixed with the roe. The eggs are then placed in a fine mesh screen to drain.

The caviar is packed in tin, glass or porcelain containers equipped with tight-fitting covers. It is then ready to eat or store under refrigeration.

Pasteurization

Some, not all, caviar is pasteurized. Pasteurization is effected by the immersion of the cans or jars of caviar in a hot-water bath at 155-160 degrees Fahrenheit for 30, 45, and 60 minutes for 1, 2, and 4 ounce containers, respectively. This treatment makes it possible to store caviar at temperatures as high as 60 degrees Fahrenheit for several months without off-flavors or decomposition resulting.

Special Requirements for Transport

The refrigerator, with its compartments for below freezing point storage, presents many dangers to the preservation of caviar. Once caviar has been frozen and then thawed out, the roe (berries) will have burst, the product will have become mushy, and the quality will have deteriorated to the lowest grade. In order to avoid having the berries burst, caviar must be refrigerated at 28 to 32 degrees Fahrenheit.

A prime requirement for top quality caviar is that each berry be well coated with its own glistening fat. One of the purchaser's concerns is that the fat in the caviar does not rise to the top of the can, to be scooped off by the vendor for a preferred customer, leaving less fatty berries for other, later buyers. The conscientious shipper sees to it that the caviar tins in the refrigerator are turned frequently during transport, in order to keep the fatty substance well distributed.

CLASSIFICATION OF CAVIAR

The Harmonized Tariff Schedule of the United States (HTSUS) has an eo nomine provision for caviar in subheading 1604.30.2000, HTS. The General rate of duty is 15 percent ad valorem.

True caviar is roe that comes from the sturgeon. The Explanatory Notes to the Harmonized Commodity Description and Coding System defines caviar in Chapter 16 thus:

Caviar is prepared from the roe of the sturgeon, a fish found in the rivers of several regions (Italy, Alaska, Turkey, Iran and Russia); the main varieties are Beluga, Schirp, Ossiotr and Sewruga. Caviar is usually in the form of a soft, granular mass, composed of eggs between 2 and 4 mm in diameter and ranging in color from silver-grey to greenish- black; it has a strong smell and a slightly salty taste. It may also be presented pressed i.e: reduced to a homogeneous paste, sometimes shaped into small slender cylinders or packed in small containers.

Chapter 16 excludes fish roe that is still enclosed in the ovarian membrane, prepared or preserved only by processes provided for in Chapter 3.

Caviar of subheading 1604.30.2000, HTSUS, may be entered at a free or reduced rate of duty, if the country of origin has been designated a beneficiary country under the Generalized System of Preferences or is a party to one of various trade agreements. The "Special" rate of duty column of the current HTSUS should be consulted for up-to-date information.

The Column 2 rate of duty is 30 percent ad valorem.

CLASSIFICATION OF CAVIAR SUBSTITUTES

Roe that comes from a fish other than the sturgeon is not true caviar, and it is classifiable as a caviar substitute. For example, the eggs of lumpfish, whitefish and salmon may be prepared or preserved as caviar substitutes. Although the term "caviar" may appear on the commercial invoice, and the importer's price list may show the

merchandise under a caviar heading, for Customs classification purposes, this roe is not caviar, but rather, a caviar substitute. Attention must be given to the name of the fish that is specified on the invoice.

The Explanatory Notes describe caviar substitutes thus:

These are products consumed as caviar but prepared from the eggs of fish other than sturgeon (e.g., salmon, carp, pike, tuna, mullet, cod, lumpfish), which have been washed, cleaned of adherent organs, salted and sometimes pressed or dried. Such fish eggs may also be seasoned and colored.

The HTSUS provides for caviar substitutes under two subheadings. If the caviar substitute has been boiled and packed in airtight containers, the applicable subheading is 1604.30.3000, HTSUS, which provides for prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs, caviar and caviar substitutes, caviar substitutes, boiled and in airtight containers. The General rate of duty is Free.

The Column 2 rate of duty is 30 percent ad valorem.

Caviar substitutes, other than those which have been boiled and packed in airtight containers, are classifiable under subheading 1604.30.4000, HTS, which provides for prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs, caviar and caviar substitutes, caviar substitutes, other. The General rate of duty is Free. The Column 2 rate of duty is 44 cents per kilogram.

REQUIRED DOCUMENTATION

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. As a result of the Tenth Conference of the CITES Parties (which includes the United States), held in June 1997, all species of sturgeon and paddlefish are now listed in either Appendix I or II of CITES. Those species, whose international trade is controlled, are listed in Appendices I, II and III to the Convention. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that may become threatened with extinction if trade is not regulated. Appendix III includes species listed by individual range countries to obtain international cooperation in controlling trade. In this regard, CITES trade control covers the import, export, re-export and introduction from the sea of such items.

All shipments of sturgeon, paddlefish and their products (such as, caviar) must be accompanied by a valid CITES export permit or re-export certificate issued by the CITES Management Authority of the (re)exporting country and must be declared to U.S. Fish and Wildlife (FWS) Inspectors, upon importation into the United States. (Unless

exempted by the Fish and Wildlife Service, all imports or exports must be cleared at a FWS designated port.)

All imports of such products must also be accompanied by a "Declaration for Importation or Exportation of Fish or Wildlife," FWS Form 3-177.

It should be noted that in late 2005, the Fish and Wildlife Service suspended trade in beluga sturgeon caviar originating in the Caspian Sea basin countries (Azerbaijan, Iran, Kazakhstan, Russia, and Turkmenistan) and the Black Sea basin countries (Bulgaria, Georgia, Romania, Russia, Serbia & Montenegro, Turkey, and Ukraine). This action effectively banned the importation of beluga sturgeon in any form (including caviar) into the United States from any of those countries.

Questions regarding import requirements for sturgeon, paddlefish and their products should be directed to local Fish and Wildlife field offices or to FWS Headquarters at (703) 358-1949 or (703) 358-2095. Information is also available at the FWS website, at www.fws.gov.

LABELING

In 2007, the Fish and Wildlife Service updated regulations that implement CITES in the United States. Among the changes were new regulations adopting the CITES-recommended universal labeling system for containers of caviar. The regulations provide that sturgeon caviar imports, exports and re-exports must bear non-reusable labels affixed by the caviar-processing plant in the country of origin showing all of the following information: a standardized species code, source code, two-letter ISO code of the country of origin, year of harvest, and processing plant code and identification number.

INVOICING REQUIREMENTS

The accuracy of the information contained on invoices is an essential element of the structure of the many new and creative programs CBP has undertaken recently. These programs, including, but not limited to, automated entry processing and pre-importation review, may provide their benefits to the trade community as a whole, only if the data gathered is correct and complete. This concern for invoice accuracy is not new, but, as we progress in automation, accuracy becomes indispensable.

Section 141.86 of the CBP Regulations concerns invoicing requirements. Subparagraph (a)(3) of the section specifically requires that invoices have the following information:

"A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers and symbols

under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed."

A "detailed description" is one which enables an import specialist to properly classify imported merchandise. Accordingly, the invoice description must indicate any information which has a direct bearing on the proper classification of the imported item and it is incumbent upon the importer of record to ensure that the detailed description is present on each invoice.

Importers do not have to provide information that is not necessary to classify a specific item. However, they are responsible for giving CBP the information that is needed.

The following information is required on all invoices for caviar:

- 1) Detailed description of the caviar or caviar substitute i.e: if caviar, the species of sturgeon (beluga, osetra, sevruga, or pressed caviar); if a caviar substitute, the common name and the scientific name of the fish
- 2) Method of packing - size of the can or jar
- 3) Unit value
- 4) Total value of shipment
- 5) Terms of sale
- 6) Weight in pounds or kilograms
- 7) Country of origin

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ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the "Know Before You Go" publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



Visit our Internet web site: <http://www.cbp.gov>