U.S. Customs Service

Treasury Decision

(T.D. 02–20)

GUIDELINES FOR THE CANCELLATION OF CERTAIN CLAIMS FOR LIQUIDATED DAMAGES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Under the Omnibus Trade and Competitiveness Act of 1988, the Secretary of the Treasury is required to publish guidelines for the cancellation of bond charges. There are certain Customs bond charges for which no guidelines have been published. This document publishes new guidelines for claims for liquidated damages established against holders of International Carrier Bonds for failure to redeliver to Customs custody merchandise which has been exported in violation of export control laws; against importers for failure to file NAFTA duty-deferral entries; and against Trade Fair Operators for violation of any of the conditions of the Basic Importation Bond relating to Trade Fairs. In addition, this document amends the guidelines published in T.D. 94–38 regarding the cancellation of claims when petitions are filed after established regulatory time frames have expired. This document also provides cancellation standards for all carnet cases. This document will supersede, in part, Customs Directive 3280–011A and Customs Directive 3280–016 as they relate to the cancellation of claims for liquidated damages arising from breach of ATA or TECRO/AIT Carnets.

EFFECTIVE DATE: These guidelines will take effect upon April 19, 2002 and shall be applicable to all cases which are currently open at the petition or supplemental petition stage.

FOR FURTHER INFORMATION CONTACT:

For carnet guidelines: John Connors, Penalties Branch, Office of Regulations and Rulings (202) 927–2274.

For all other guidelines: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202) 927–2344.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1904 of the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100–418) amended section 623 of the Tariff Act of 1930 (19

U.S.C. 1623) by adding the following sentence at the end of section 623(c) of the Tariff Act of 1930 (19 U.S.C. 1623(c)):

> "In order to assure uniform, reasonable and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder."

In T.D. 94–38, dated April 11, 1994, bond cancellation standards were published for claims involving late filing of entry summaries, late payment of estimated duties, violations of Temporary Importation Bonds, failure to redeliver merchandise, late filing of shipper's export declarations, missing document cases, in-bond violations, warehouse bond violations, airport security violations, foreign trade zone violations, failure to hold merchandise at the place of examination, failure to hold merchandise at or deliver it to a centralized examination station and late filing of petitions for relief.

In T.D. 98–53, dated June 2, 1998, bond cancellation standards were published for claims arising from the failure to file or late filing of softwood lumber export information.

In T.D. 99–29, dated March 26, 1999, new guidelines were published for all violations involving failure to notify or late notification of the presence of unentered merchandise eligible for general order and for removal of merchandise from container freight stations. In addition, T.D. 99–29 revised guidelines originally published in T.D. 94–38 which covered delivery of merchandise to or removal of merchandise from Centralized Examination Stations (CES), delivery of cargo from the place of unlading or the place of examination without Customs authorization, and in-bond violations.

In T.D. 01–41, dated May 21, 2001, the text of guidelines originally published in T.D. 94–38 for cancellation of claims for liquidated damages arising from violations involving a foreign trade zone bond was revised and published.

This document publishes new guidelines for claims for liquidated damages established against holders of International Carrier Bonds for failure to redeliver to Customs custody merchandise which has been exported in violation of export control laws; against importers for failure to file NAFTA duty-deferral entries; and against Trade Fair Operators for violation of any of the conditions of the Basic Importation Bond relating to Trade Fairs.

In addition, this document amends the guidelines published in T.D. 94–38 regarding the cancellation of claims when petitions are filed after established regulatory time frames have expired. This document raises the minimum additional charge for a late petition from $100 to $400.

In December 1961, the Customs Cooperation Council (CCC), (since redesignated as the World Customs Organization (WCO)) adopted the Customs Convention on the ATA Carnet for the Temporary Admission of Goods. In July 1963, the ATA Convention entered into force. The Convention provided for the use of carnets for the duty-free admission of

certain types of merchandise. The carnets serve as the entry document and the underlying bond guaranteeing import and export of that merchandise entered free of duty.

The TECRO/AIT Carnet is a separate carnet associated with the movement of certain merchandise between the United States and Taiwan established by virtue of a bilateral carnet agreement between the Taipei Economic and Cultural Representative in the United States (TECRO) and the American Institute in Taiwan (AIT). Under the TECRO/AIT Carnets, commercial samples and professional equipment shipped from Taiwan to the United States may be temporarily imported with the benefits of carnet facilitation.

While Customs has promulgated regulations regarding the assessment of liquidated damages for failing to meet the terms and conditions of carnets and has issued directives for their administration (for ATA carnets, Customs Directive 3280–011A, dated February 3, 2000, and for TECRO/AIT carnets, Customs Directive 3280–016, dated November 23, 1999), which included some mitigation instruction, formal guidelines for the cancellation of those liquidated damages claims arising from breaches of carnets have never been published. This document supersedes Customs Directive 3280–011A and Customs Directive 3280–016 as they relate to mitigation and cancellation of claims for liquidated damages arising for breach of an ATA or TECRO/AIT Carnet.

The text of the guidelines is set forth below.

Dated: April 15, 2002.

ROBERT C. BONNER,
Commissioner of Customs.

I. Guidelines for Cancellation of Claims for Failure to Redeliver Export Merchandise (19 CFR 113.64(f)(1) and (f)(2))

A. Assessment.

Claims for failure to redeliver merchandise exported in violation of the export laws result in the assessment of liquidated damages equal to 3 times the value of that merchandise.

B. Mitigation.

1. There will be no mitigation of the claim for liquidated damages in the event that a significant enforcement objective is involved with respect to the reason for the redelivery order. For example, if goods subject to the redelivery order were stolen goods or were being exported to a country for which exportations of the specific goods are embargoed, no relief should be given from the liquidated damages claim.

2. For all other cases, the following guidelines apply to the cancellation of the claim for liquidated damages:

a. First violation—Cancel the claim for liquidated damages upon payment of an amount between 10 and 50 per-

cent of the value of the cargo but in no case will the claim be cancelled upon payment of an amount less than two times the freight charges (if calculable). This is necessary in order to offset any economic advantage that might be gained through a failure to redeliver the merchandise.

b. Second and subsequent violations—Cancel the liquidated damages claim upon payment of an amount no less than the value of the cargo or five times the freight charges (if calculable), whichever is larger.

II. Guidelines for Assessment and Cancellation of Claims for Failure or Late Filing of NAFTA Duty Deferral Entries

A. Filing of NAFTA Duty Deferral Entry.

1. If merchandise is originally entered into a duty-deferral program here in US (TIB, bonded warehouse or FTZ) and then exported to Canada or Mexico or entered into a duty-deferral program in Canada or Mexico, a NAFTA duty-deferral entry must be filed.

2. A CF–7501 summary reporting export and duty-owed information must be filed with Customs 10 working days from the date of export or entry into the duty-deferral program in Canada or Mexico.

3. If the summary is never filed or filed after 10-working day filing period, a liquidated damages claim for breach of 19 CFR 113.62(b)(4) and 181.53(a)(2)(iii)(B) may be initiated for a NAFTA duty deferral non- or late file. Claim is assessed at the value of merchandise exported.

B. Payment of NAFTA Duty Deferral Duties.

1. Payment of duties due with the NAFTA duty-deferral entry must be deposited with Customs no later than 60 calendar days from the date of export or entry into the duty-deferral program in Canada or Mexico. See 19 CFR 181.53(a)(2)(iii)(C). This includes any reduced duties that must be deposited with the filing of any claim for reduced duties per 19 CFR 181.53(a)(3)(ii).

2. Failure to deposit or late deposit of duties will result in the assessment of a claim for liquidated damages for double the unpaid duties or $1,000, whichever is greater, for violation of 19 CFR 113.62(a)(1) and 19 CFR 181.53(a)(2)(iii)(C).

C. Mitigation Guidelines.

1. Late file of the duty-deferral entry (no revenue consequence) where the CF–7501 is filed outside the 10-working day period, but the NAFTA deferral duties are paid timely (as in A.3. above): Option 1 amount of $100. If the principal or surety petitions for relief and cannot show that the violation did not occur, or only occurred as a result of Customs error, then mitigate to an amount no lower than $200.

2. Failure to deposit duties within 60 calendar days of export or entry into a duty-deferral program in Canada or Mexico, (as in B.2. above): no mitigation shall be afforded until duties are deposited.

3. Late payment of duties after issuance of a claim for failure to deposit duties: Option 1 amount of $200 + interest amount calculated in same manner as for late payment of estimated duties. If the principal or surety petitions for relief and cannot show that the violation did not occur, or only occurred as a result of Customs error, then mitigate to an amount no lower than $300 plus the appropriate interest amount.

4. Late payment of duties when a failure to deposit claim was not issued: Option 1 amount of $100 + interest amount calculated in same manner as for late payment of estimated duties. If the principal or surety petitions for relief and cannot show that the violation did not occur, or only occurred as a result of Customs error, then mitigate to an amount no lower than $200 plus the appropriate interest amount.

III. Guidelines for Cancellation of Claims for Violations Arising From Failure to Comply With Trade Fair Regulations

A. Trade Fair Operators are required to file a Basic Importation Bond per 19 CFR 147.3 covering articles entered for the Fair per 19 CFR 147.2.

B. If payments required by 19 CFR 147.33 (relating to reimbursement to the Government by the fair operator of certain expenses), 19 CFR 147.41 (relating to merchandise removed from the fair not in accordance with regulation) or 19 CFR 147.43 (relating to entry of merchandise from a fair) are not made upon demand, then liquidated damages may be assessed per 19 CFR 147.3 and 19 CFR 113.62(g) or (h).

C. Failure to use or handle merchandise in a manner which entitles it to duty-free entry (i.e., removing it from the Fair other than in accordance with regulation including failure to make entry, if appropriate) will result in assessment of liquidated damages equal to the value of the merchandise involved in the violation (or three times the value if the merchandise is prohibited, restricted or alcoholic beverages) in accordance with 19 CFR 147.3, 147.41, 147.43, 113.62(h) and 113.62(l)(1).

D. Failing to exonerate the United States from risk or loss relating to the expenses incurred regarding the Fair will result in a claim for those expenses per 19 CFR 147.3, 147.33 and 113.62(g).

E. Cancellation standards.

1. There will be no mitigation from any claim made for failure to exonerate the Government from risk or loss per 19 CFR 113.62(g).

2. For failure to use or handle the merchandise in a manner entitling it to duty-free entry, the claim will be cancelled upon payment of an amount between one and five times the loss of revenue (if a revenue loss violation) or upon payment of 5 to 30 percent of value (if no revenue loss is involved) depending on the presence of mitigating or aggravating circumstances.

IV. Guidelines for Cancellation of Claims When Petitions for Relief Are Filed Untimely (Revision of Section X of T.D. 94–38 Guidelines)

A. Petitions may be accepted at the discretion of the Fines, Penalties & Forfeitures Officer at any time prior to commencement of any sanctioning action against a bond principal or the issuance of any notice to show cause against a surety.

B. If a petition is received untimely, Customs will first consider the petition as though it had been filed timely and shall determine the amount of mitigation that would have been afforded in the case had the petition been filed timely. For purposes of these guidelines, this determination shall be known as the "base amount."

C. Once the base amount has been determined, Customs shall charge an additional amount in excess of the base amount by calculating the number of calendar days that the petition is late and charging an additional mitigation amount of 0.1 percent (.001) per day. In no case will the additional amount be less than $400.

D. If the bond principal fails to file a petition during the time period provided by regulation, but then files a petition during the period in which the surety, by regulation, could file a petition, that petition will be considered as a late petition. The number of days late shall be calculated from the end of the 60-day petitioning period afforded to the principal. The demand on surety will be considered as an additional demand.

NOTE: For purposes of all bond cancellation standards, the term value shall mean value as determined under 19 U.S.C. 1401a.

V. Guidelines for Cancellation of Claims Arising From Breach of ATA or TECRO/AIT Carnets

A. Assessment of claims.

1. Articles entered under an ATA or TECRO/AIT carnet must be re-exported or destroyed prior to the expiration of the carnet period.

2. Failure to re-export or destroy those articles in the time period prescribed will result in the assessment of liquidated damages in an amount equal to 110 percent of the duties due on the articles.

3. The term "duties" does not include Merchandise Processing Fees or Harbor Maintenance Taxes for carnet claim assessment purposes.

4. All claims will be assessed against the guaranteeing association, the United States Council for International Business (USCIB).

5. No claim may be established more than one year after the expiration of the period for which the carnet was valid.

B. Petitions for relief.

1. Petitions for relief must be filed within 6 months of the date of the claim (the date of the CF–5955A).

2. The petition must provide proof of re-exportation or destruction of the articles.

3. If no petition is submitted in the 6-month period, the USCIB must provide full payment of the claim.

4. Such payment must be made within 30 days from the end of the 6-month period.

5. The USCIB will then have 90 days from the date of payment to submit adequate proof of re-exportation or destruction in order to receive a refund.

C. Proof of re-exportation or destruction; regularization fees.

1. The ATA Convention allows Customs officials to charge a regularization fee for assisting the foreign issuing association in avoiding the liquidated damages. The regularization fee is a service fee and is not liquidated damages. Regularization fees will be charged as described herein.

2. If the petitioner provides a re-exportation counterfoil, unconditionally discharged by Customs, then the claim will be closed without payment. If payment of liquidated damages has been made, then a full refund shall be afforded. The term "unconditionally discharged" means that no remarks were noted by a Customs officer in the appropriate sections of the counterfoil.

3. If the petition provides an appropriate importation carnet voucher signed by a foreign Customs officer, the claim will then be regularized upon payment of $50.

4. If the petitioner provides any other acceptable proof of re-exportation or destruction, then the claim will be regularized upon payment of $100.

5. Small dollar value carnets. If the assessed amount for breach of a carnet is $100 or less (including carnets for zero duties), the claim still must be assessed. It is possible, based upon the type of proof of re-exportation or destruction provided, that payment of a regularization fee in excess of the assessed liquidated damages amount could occur. Unlike other liquidated damages claims, the amount of the bond does not limit liability for payment of the regularization fee, which is a fee for service. (See section F. below)

D. Partial re-exportation or destruction.

1. In any situation where partial re-exportation or destruction occurs, if that re-exportation or destruction occurs within the carnet period and proof of re-exportation or destruction other than an unconditional discharge by a Customs officer is provided, Customs will collect a regularization fee with regard to that portion of merchandise for which adequate proof of re-exportation or destruction is provided.

2. If the partial re-exportation or destruction occurs beyond the carnet period, mitigation may be afforded (see Section E. below).

3. Full liquidated damages will be charged on that portion of the merchandise for which neither proof of re-exportation or destruction is provided. Partial liquidated damages and a regularization fee could be collected in closure of the same carnet.

4. If a re-exportation counterfoil showing an unconditional discharge as to part of a shipment of merchandise is provided timely, no collection will be made as to that merchandise.

E. Late Re-Exportation.

1. If merchandise is re-exported (or destroyed) after the one-year period and a re-exportation counterfoil indicating unconditional discharge by a Customs officer is provided timely, the claim shall be cancelled without payment.

2. If merchandise is re-exported (or destroyed) 180 days or more after the expiration of the carnet period and a re-exportation counterfoil indicating an unconditional discharge by a Customs officer is not provided, no relief from the claim shall be afforded.

3. If merchandise is re-exported (or destroyed) more than 90 days but less than 180 days after the expiration of the carnet period and adequate proof of re-exportation or destruction other than a re-exportation counterfoil with an unconditional discharge by a Customs officer is provided, the claim for liquidated damages may be cancelled upon payment of 50 percent of the liquidated damages assessed amount but not less than $100.

4. If merchandise is re-exported (or destroyed) 90 days or less after the expiration of the carnet period and adequate proof of re-exportation or destruction other than an exportation counterfoil with an unconditional discharge by a Customs officer is provided, the claim for liquidated damages may be cancelled upon payment of 25 percent of the claim but not less than $50.

F. Late Re-Exportation of Duty Free and Zero Duty Merchandise.

1. If merchandise is duty free or has a zero duty rate, claims for liquidated damages should still be assessed.

2. Claims for duty free and zero duty carnets will be processed in accordance with these guidelines.

G. Issuance of claims.

1. If a claim is received by the USCIB after the one-year period has expired, the claim will not be pursued.

2. Claims issued by Customs more than 30 days prior to the end of the one-year period will be presumed to be timely.

3. Claims should be issued by Customs as promptly as possible after discovery.

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