

U.S. Customs and Border Protection

PENALTIES – PTI 7

PORT OF CHICAGO

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THREE TYPES OF ACTIONS

- Seizures
- Penalties
- Claims for Liquidated Damages

SEIZURES

- A seizure occurs when a government official takes possession of the merchandise or other article, such as a vehicle, for violation of a CBP law (or a law enforced by CBP).
- Most of our seizures are enforcement actions against the property itself (we seek forfeiture of the property).

Examples

- Prohibited merchandise (controlled substances, counterfeit goods)
- Undeclared or smuggled merchandise
- Items that facilitate an illegal importation (conveyances or other merchandise used to hide or conceal illegal goods)
- Merchandise that violates restrictions imposed under textile quota agreements, Treasury's Office of Foreign Assets Control, CPSC, EPA, or FDA
- Merchandise that violates State or Commerce Department licensing or reporting requirements (Exodus violations)

PENALTIES

- A penalty is a monetary assessment against a party who violates a CBP law (or law enforced by CBP).
- Penalties are provided for by statute, and are assessed at the amount authorized by the particular statute (e.g. \$1000, \$5000, a multiple of the loss of revenue, or the domestic value of the merchandise).

Examples

- Conveyance Arrival or Reporting Violations (19 U.S.C. 1436)
- Aiding Unlawful Importation (19 U.S.C. 1595a(b))
(used primarily for unauthorized delivery violations)
- **Commercial Fraud/Negligence (19 U.S.C. 1592)**
- Broker Violations (19 U.S.C. 1641)
- Counterfeit Trademarks - Civil Fines (19 U.S.C. 1526(f))

LIQUIDATED DAMAGES

- A claim for liquidated damages is a monetary assessment against a party who breaches a bond condition.
- Liquidated damages are assessed at the amount prescribed under the regulations for the specific bond breach (e.g. the entered value or 3x the entered value).

Examples

- Late-filing of entry summaries (19 CFR 142.15; 19 CFR 113.62)
- Unauthorized delivery of merchandise by a Container Freight Station (19 CFR 113.63)
- Unauthorized delivery by an in-bond carrier (19 CFR 113.63 & 19 CFR 18.8)
- Failure to redeliver FDA-refused merchandise into CBP custody (19 CFR 141.113)
- Failure to export or destroy merchandise entered under a T.I.B. (19 CFR 10.39)

YEARLY CASE VOLUME

(PORT OF CHICAGO)

Seizure Cases	4,600
Liquidated Damages	1,800
Penalty Cases	<u>300</u>
Total	<u>6,700</u>

SEACATS

Seized
Asset and
Case
Tracking
System

SEACATS - continued

Case Numbers:

2008-3901-300000-01

2008 Fiscal Year

3901 Port Code

3 Case Type Indicator

00000 Sequence Number

01 Additional Sequence Number

SEACATS - continued

20083901**1**0001201

CASE TYPE INDICATOR

0= Seizure

1= Seizure

2= Liquidated Damages

3= Penalty

SEACATS - continued

Sample Liquidated Damages Case Number:

2008-3901-**2**00123-01

Sample Penalty Case Number:

2008-3901-**3**00123-01

**COMMERCIAL FRAUD
AND NEGLIGENCE
VIOLATIONS**

19 U.S.C. 1592

WHAT IS A 1592 VIOLATION?

When a party:

- by fraud, negligence, or gross negligence,
- enters or introduces merchandise into the commerce of the United States,
- by means of any document, statement, or act which is material and false; or any omission which is material.

FALSE DOCUMENT¹ OR STATEMENT

- Altered documents
- Phony invoices
- Misdéscriptions or mischaracterizations
- False country of origin
- False manufacturer

¹ OR ELECTRONICALLY TRANSMITTED DATA OR INFORMATION

FALSE ACT

- Port Shopping
- Removal of country of origin marking after importation
- Filing an in-bond entry with intent to divert into the U.S. commerce

OMISSION

- Not providing (or having) a document or information that's necessary for CBP to determine classification, appraisement, admissibility, or applicability of other laws
- Failure to present or have a textile visa
- Failure to have a valid NAFTA Certificate of Origin to support a claim for a NAFTA entry

MATERIALITY

The omission or the false document, statement, or act is material if it has the potential to alter:

- classification, appraisement or admissibility;
- liability for duty;
- reporting of accurate trade statistics; or
- a determination of whether there has been a violation of antidumping/countervailing duty laws, patent, trademark or copyright laws, or any other unfair trade practice

CULPABILITY

Fraud - The violation was committed voluntarily and intentionally

Gross Negligence - The violation was committed with actual knowledge of or wanton disregard of the actual facts

Negligence - The violation occurred due to failure to exercise reasonable care

1592 PENALTY AMOUNTS

(WITHOUT PRIOR DISCLOSURE)

	<u>MAXIMUM ASSESSMENT</u>	<u>MITIGATION AMOUNTS</u>
FRAUD	THE DOMESTIC VALUE	5 X TO 8 X THE L.O.R., NOT TO EXCEED THE DOMESTIC VALUE
GROSS L.O.R., NEGLIGENCE	4 X THE L.O.R., NOT TO EXCEED THE DOMESTIC VALUE	2.5 X TO 4 X THE NOT TO EXCEED THE DOMESTIC VALUE
NEGLIGENCE	2 X THE L.O.R., NOT TO EXCEED THE DOMESTIC VALUE	.5 X TO 2 X THE L.O.R., NOT TO EXCEED THE DOMESTIC VALUE

1592 PENALTY AMOUNTS (WITH PRIOR DISCLOSURE)

	<u>MAXIMUM ASSESSMENT</u>	<u>MITIGATION AMOUNT</u>
FRAUD	1 X THE L.O.R.	USUALLY NOT MITIGATED
GROSS NEGLIGENCE	INTEREST ON THE L.O.R., FROM LIQUIDATION DATE TO THE DATE THE L.O.R. IS PAID	USUALLY NOT MITIGATED
NEGLIGENCE	SAME AS ABOVE	SAME AS ABOVE

STEPS IN THE 1592 PENALTY PROCESS

1. CBP employee documents a violation
2. Referral made to FP&F
3. Pre-penalty notice is issued
4. Pre-penalty response is considered
5. Penalty notice is issued
6. Penalty response is considered
7. Penalty is paid or case is referred

CONTENTS OF A 1592 PREPENALTY NOTICE

1. A description of the merchandise involved in the violation (e.g., ladies knit blouses);
2. A list of the entries, including dates and ports involved;
3. Citation of the law(s) violated;
4. The alleged material false documents, statements, acts, or material omissions that form the basis for the violation;

5. The degree of culpability (fraud, gross negligence, or negligence);
6. The loss of revenue, broken down by actual loss and potential loss of revenue;
7. The amount of proposed penalty (e.g. two times the loss of revenue); and
8. Notification of the violator's right to make a presentation, both written and oral, as to why the proposed penalty should not be issued in the amount stated.

WHAT IS INCLUDED IN A PREPENALTY NOTICE?

- **COVER LETTER**
- **EXHIBIT A (description of the violation);**
- **APPRAISAL WORKSHEET¹**

¹If the case involves a perfected prior disclosure, an interest calculation worksheet will be included instead of the appraisal worksheet

COVER LETTER

Port Case No.

Gentlemen:

This is to inform you that pursuant to Title 19, Code of Federal Regulations, Section 162, notice is hereby given that the United States Customs and Border Protection is contemplating assessing a penalty against you in the amount of \$_____. This amount represents the maximum penalty for (culpability) for your introduction of merchandise into the United States in violation of Title 19, United States Code, Section 1592.

Prior to the issuance of a notice of penalty, you have the right to make an oral and written presentation as to why the claim for monetary penalty should not be issued in the amount proposed. The written presentation must be made within thirty (30) business days from the date of the mailing of the pre-penalty notice as provided for in sections 162.77/78 of the Customs Regulations. Should you wish to make an oral presentation, please contact _____ of my staff at the above telephone number to arrange a mutually convenient time and date for the presentation. Please be advised that we prefer the oral presentation be arranged after submission of the written response. The penalty notice will be issued automatically should you fail to respond to the pre-penalty notice within the effective period.

Exhibit A contains relevant information concerning the penalty action, i.e. specific details of the violation. Exhibit B represents the consumption entries involved in the penalty action.

If we do not hear from you within the time frame stipulated above the matter will be referred to the Court of International Trade for the institution of judicial proceedings.

Sincerely,

Fines, Penalties & Forfeitures Officer

EXHIBIT A

1. **Description of Merchandise:** Widgets
2. **Shipper/Manufacturer:** ABC Corporation
3. **Broker:** XYZ International Inc.
4. **Importer of Record:** Bob's Imports
5. **Details of Entries:** See Appraisal Worksheet
6. **Loss of Revenue:**

Actual	\$110,400.00
Potential	\$190,333.00
Total	\$300,733.00
7. **Law Violated:** 19 U.S.C. 1592
8. **Facts Establishing Violation:** Bob's Imports entered into the United States, by means of material false statements and false documents, 55 shipments of widgets that were misdescribed and misclassified on the entry documents as lawn chairs.
9. **Proposed Culpability:** Negligence
10. **Proposed Penalty:** \$601,406.00 (2 times the loss of revenue)

APPRAISAL WORKSHEET

Date of Appraisal: _____

Port Case Number: _____

Appraiser's Name: _____

Appraiser's Signature: _____

Violator: _____

Entry Number	Date of Entry	Line No.	Entered Value	Appraised Value	Duty Paid	Proper Duty	Loss of Revenue		Domestic Value
							Actual	Potential	
XXX-10026293	1/8/2004	1	\$16,262.00	\$16,262.00	\$861.89	\$2,862.11	\$2,000.23		\$23,905.14
XXX-10025875	7/18/2004	1	\$18,092.00	\$18,092.00	\$958.88	\$3,184.19	\$2,225.32		\$26,595.24
XXX-10025893	7/24/2005	1	\$19,839.00	\$19,839.00	\$1,051.47	\$3,491.66	\$2,440.20		\$29,163.33
XXX-10025934	8/7/2005	1	\$19,896.00	\$19,896.00	\$1,054.49	\$3,501.70	\$2,447.21		\$29,247.12
XXX-10025999	8/29/2006	1	\$21,191.00	\$21,191.00	\$1,123.12	\$3,729.62	\$2,606.49		\$31,150.77
XXX-20029090	5/2/2007	1	\$16,693.00	\$16,693.00	\$884.73	\$2,937.97		\$2,053.24	\$24,538.71
XXX-20029093	5/3/2007	1	\$17,831.00	\$17,831.00	\$945.04	\$3,138.26		\$2,193.21	\$26,211.57
XXX-20028939	5/4/2007	1	\$18,460.00	\$18,460.00	\$978.38	\$3,248.96		\$2,270.58	\$27,136.20
XXX-20028940	5/4/2007	1	\$14,501.00	\$14,501.00	\$768.55	\$2,552.18		\$1,783.62	\$21,316.47
XXX-20028959	5/15/2007	1	\$16,813.00	\$16,813.00	\$891.09	\$2,959.09		\$2,068.00	\$24,715.11
XXX-20028968	5/18/2007	1	\$17,600.00	\$17,600.00	\$932.80	\$3,097.60		\$2,164.80	\$25,872.00
XXX-20028989	5/25/2007	1	\$32,927.00	\$32,927.00	\$1,745.13	\$5,795.15		\$4,050.02	\$48,402.69
XXX-20028996	5/29/2007	1	\$36,749.00	\$36,749.00	\$1,947.70	\$6,467.82		\$4,520.13	\$54,021.03
XXX-20029029	6/13/2007	1	\$17,406.00	\$17,406.00	\$922.52	\$3,063.46		\$2,140.94	\$25,586.82
XXX-20029044	6/15/2007	1	\$17,763.00	\$17,763.00	\$941.44	\$3,126.29		\$2,184.85	\$26,111.61
XXX-20029050	6/22/2007	1	\$33,401.00	\$33,401.00	\$1,770.25	\$5,878.58		\$4,108.32	\$49,099.47
XXX-20029059	6/24/2007	1	\$18,047.00	\$18,047.00	\$956.49	\$3,176.27		\$2,219.78	\$26,529.09
Totals			\$353,471.00	\$353,471.00	\$18,733.96	\$62,210.90	\$11,719.44	\$31,757.49	\$519,602.37

INTEREST CALCULATION WORKSHEET

Date of Calculation:			PORT CASE #:		
			PREPARED BY:		
			TITLE:		
			COMMODITY TEAM:		
Violator:					
Entry Number	Entry Date	Liquidation Date	Paid	Date of Payment	Interest
XXX-04013250	3/4/1999	3/18/1999	\$ 1,247.00	10/16/2003	\$ 482.37
XXX-04013296	3/10/1999	3/24/1999	\$ 1,409.00	10/16/2003	\$ 542.78
XXX-04057992	3/24/1999	4/12/1999	\$ 1,799.00	10/16/2003	\$ 683.21
XXX-04013598	3/31/1999	4/14/1999	\$ 125.00	10/16/2003	\$ 47.40
XXX-04013614	4/23/1999	5/7/1999	\$ 1,568.00	10/16/2003	\$ 583.66
XXX-01048822	4/30/1999	5/13/1999	\$ 728.00	10/16/2003	\$ 269.67
XXX-04013681	5/4/1999	5/18/1999	\$ 800.00	10/16/2003	\$ 295.14
XXX-05010509	5/10/1999	5/21/1999	\$ 305.00	10/16/2003	\$ 112.25
XXX-04058172	5/19/1999	6/7/1999	\$ 695.00	10/16/2003	\$ 252.24
XXX-04013875	6/1/1999	6/15/1999	\$ 970.00	10/16/2003	\$ 349.74
XXX-04014138	7/9/1999	7/23/1999	\$ 585.00	10/16/2003	\$ 204.32
XXX-04014516	8/25/1999	7/7/2000	\$ 337.00	10/16/2003	\$ 83.06
XXX-04015161	11/10/1999	11/23/1999	\$ 290.00	10/16/2003	\$ 90.88
XXX-04015729	1/19/2000	12/1/2000	\$ 1,459.00	10/16/2003	\$ 295.06
XXX-04015792	1/31/2000	12/15/2000	\$ 7,317.00	10/16/2003	\$ 1,449.51
XXX-04015712	2/1/2000	12/15/2000	\$ 5,488.01	10/16/2003	\$ 1,087.19
XXX-04016395	2/27/2000	1/12/2001	\$ 1,220.00	10/16/2003	\$ 231.65
XXX-04016035	2/28/2000	1/12/2001	\$ 2,606.00	10/16/2003	\$ 494.81
XXX-04016072	2/29/2000	1/12/2001	\$ 1,941.00	10/16/2003	\$ 368.54
XXX-04059374	3/8/2000	1/19/2001	\$ 18,125.00	10/16/2003	\$ 3,404.27
XXX-04059492	4/20/2000	3/29/2002	\$ 6,090.00	10/16/2003	\$ 593.24
XXX-04016877	6/20/2000	7/3/2000	\$ 288.00	10/16/2003	\$ 71.34
XXX-04017809	10/25/2000	10/19/2001	\$ 681.00	10/16/2003	\$ 81.72
XXX-04060088	11/8/2000	9/21/2001	\$ 12,402.00	10/16/2003	\$ 1,563.08
XXX-04060861	11/14/2000	9/28/2001	\$ 3,467.65	10/16/2003	\$ 431.81
TOTAL			\$ 71,942.66		\$ 14,068.94

UPON RECEIPT OF PREPENALTY RESPONSE

1. FP&F and the case initiator will review and consider any written and oral responses from the alleged violator.
2. If the determination is made that no violation was committed, FP&F will issue a written statement to the alleged violator.
3. If the determination is made that a violation occurred, FP&F will issue a penalty notice, and specify any changes from the prepenalty notice.

MITIGATING FACTORS

- Contributory Customs Error
- Cooperation by the Violator
- Immediate Remedial Action
- Inexperience In Importing
- Prior Good Record
- Inability To Pay the Penalty
- CBP Knowledge

AGGRAVATING FACTORS

- Obstructing an Investigation or Audit
- Withholding Evidence
- Providing Misleading Evidence
- Prior Substantive Violations of 19 USC 1592
- Textile Transshipment
- Motive to Evade an Import Restriction or Prohibition
- Failure to Comply With a Lawful Demand or Summons to Produce Records

PRIOR DISCLOSURE

19 U.S.C. 1592(c)(4)

A violator makes a valid prior disclosure by

- disclosing 1) the class or kind of goods; 2) the import entries; 3) the specific material false statements, documents, acts or omissions; and 4) the true & accurate information which should have been provided in the entries;
- before or without knowledge of commencement of a formal investigation by the government; and
- tenders any actual loss of revenue at the time of prior disclosure or within 30 days after written notification of the loss calculation.

Prior Disclosure - Commencement of a Formal Investigation

For prior disclosure purposes, any CBP employee who discovers a possible violation commences a “formal investigation” by recording the facts and circumstances in writing.

The date of referral to a Special Agent in Charge no longer determines when a “formal investigation” has been commenced. A “formal investigation” may be commenced even if there has never been a referral to ICE.

THANK YOU