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## HOT TOPICS Archives

May, 2001 Edition

### Increased Bond Amount and Assessment of Liquidated Damages Regarding Inadmissible Food Products – T.D. 01-26

#### Final Ruling / New Regulations

The Customs Service has published a final ruling, effective April 27, 2001, on their proposed amendment to the Customs regulations intended to discourage the illegal sale of imported food. This final ruling allows for the single transaction bond amount to be the domestic value, thereby allowing for the assessment of liquidated damages equal to the domestic value of the subject merchandise.

The new regulations allow the port director to require single transaction bonds in higher amounts for all FDA regulated imports. It also allows for the assessment of liquidated damages in this higher amount for non-compliance with FDA regulations. The new formula for single transaction bond amounts will be 1) the domestic value of the merchandise, or 2) three times the value of the merchandise. The higher bond amount (formula identified in number 1) would be for an importer with a history of failing to redeliver, export or destroy inadmissible food products. The higher liquidated damage amounts will apply to all importers required to have the higher bond amounts.

As a result of the ruling, the following changes have been made to Title 19 of the Code of Federal Regulations:

#### **19CFR12.3**

*"(b) Bond amount. The bond referred to in paragraph (a) of this section must be in a specific amount prescribed by the port director based on the circumstances of the particular case that is either:*

- 1. Equal to the domestic value (see section 162.43(a) of this chapter) of the merchandise at the time of release as if the merchandise were admissible and otherwise in compliance; or*
- 2. Equal to three times the value of the merchandise as provided in section 113.62(l)(1) of this chapter.*

*(c) Liquidated damages. Whenever liquidated damages arise with regard to any food, drug, device or cosmetic subject to section 12.1(a) for failure to redeliver merchandise into Customs custody or for failure to rectify any noncompliance with the application provisions of admission, including the failure to export or destroy the merchandise within the time period prescribed by law after the merchandise has been refused admission pursuant to the provisions of the Food, Drug and Cosmetic Act, those liquidated damages will be assessed pursuant to section 113.62(l)(1) of this chapter in the amount of the bond*

*prescribed under paragraph (b) of this section."*

### **19CFR113.62 and 19CFR141.113**

*The only changes in these sections involved the replacement/addition of certain words and do not constitute a change in the actual law.*

### **Background**

Imported food is conditionally released under bond (19CFR12.3) while admissibility determinations are made. Under 19CFR141.113(c), Customs can demand the return to Customs custody of most merchandise that fails to meet admissibility laws. The demand for redelivery must be made no later than 30 days after the date of merchandise release or 30 days after the end of the conditional release period, whichever is later. The importer is required to export or destroy refused merchandise within 90 days of the refusal date. The failure to meet the above requirement results in a liquidated damage claim.

An April 1998 GAO report determined that federal efforts to ensure the safety of imported food products were not reliable. It further stated that a weakness existed in the customs bond structure in that liquidated damages arising from the failure to redeliver did not pose a deterrent to the importing of unsafe food products.

The GAO report said that liquidated damages of three times the entered value (the current standard) may not discourage the import of unsafe foodstuffs because the domestic value may be much higher than three times the entered value. Some believe that imported food often sells for **fifteen** times the declared value.

Customs responded to the GAO report in August 1999 with a proposed rulemaking to amend 19CFR12.3 to add new text which would refer to the liquidated damages assessed as a result of failing to redeliver FDA rejected merchandise. The new text provided for the assessment of the liquidated damages to be equal to the domestic value. It further stated that the new formula for single transaction bond amounts will be 1) the domestic value of the merchandise, or 2) three times the value of the merchandise.

The trade community made comments on the proposed rulemaking. After review of the comments, Customs has now announced the proposed amendment will be adopted as a final rule with few changes as a result of the trade community's comments.

### **Underwriting Requirements**

Customs brokers currently have \$10,000 in FDA single transaction bond authority. The authority is only for those entries where the broker already has a "may proceed notice". Financial statements must be obtained from importers on anything exceeding these limits.

### **For More Information**

Please contact your local Roanoke Trade bond service representative:

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- Miami, FL 800-468-5467

- Boston, MA 800-233-3620
- New York, NY 888-571-1675
- Charleston, SC 800-548-6341
- San Francisco, CA 800-255-4994
- Houston, TX 800-456-0422
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