

## INTRODUCTIONS CONTRARY TO LAW - 19 U.S.C. 1595A(C)

### I. In General

Section 1595a(c) is the primary seizure and forfeiture statute Customs uses to enforce a myriad of civil laws – both Customs laws and laws and regulations of other agencies. Many laws define what constitutes prohibited merchandise or behavior but do not provide a remedy to be enforced regarding that prohibited merchandise or as a consequence of that behavior. Section 1595a(c), on the other hand, actually provides for the seizure and forfeiture of the violative property.

Section 1595a(c) can be broken down into two distinct categories. First, subsection 1595a(c)(1) describes those instances where seizure is mandatory. It requires that Customs seize and subject to forfeiture merchandise that is:

- Stolen
- Smuggled
- Clandestinely imported or introduced
- A contraband article as defined in section 781 of the Appendix to Title 49 (which has since been re-codified as section 80302 of Title 49)
- A plastic explosive as defined in section 841(q) of Title 18.

In contrast, subsections 1595a(c)(2) and (c)(3), describe those instances where the seizing officer is provided authority and discretion in deciding whether seizure is the most appropriate enforcement action. Subsection 1595a(c)(2) provides merchandise may be seized and forfeited if:

- its importation or entry is subject to any restriction or prohibition that is imposed by law relating to health, safety, or conservation, and the merchandise is not in compliance with the applicable rule, regulation or statute
- its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license or permit
- it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved
- it is trade dress merchandise involved in the violation of a court order citing 15 U.S.C. 1125
- it is merchandise which is marked intentionally in violation of 19 U.S.C. 1304
- it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of 19 U.S.C. 1304.

Subsection 1595a(c)(3) provides merchandise may be seized and forfeited if:

- the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement and such visa, permit license or similar document or stamp which is presented with the importation or entry of the merchandise is counterfeit.

Pursuant to subsection 1595a(c)(3) and 1595a(c)(4), seizure **may not be affected**:

- if the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement and that visa, permit, license or other similar document or stamp is not presented (as opposed to presentation of a counterfeit, as described above). The merchandise rather, shall be subject to detention under 19 U.S.C. 1499
- if the merchandise is imported or introduced contrary to a provision of law which governs the classification or value of merchandise and there are no issues as to the admissibility of the merchandise into the United States.

## II. Guidelines for remission of seized property

### A. Scope

1. These guidelines are applicable only upon the filing of a petition pursuant to 19 U.S.C. 1618 for remission of the forfeiture.
2. Upon granting relief from forfeiture, the following conditions must be met:
  - Satisfaction of all costs of seizure (storage and appraisal); and
  - Submission of an executed HOLD HARMLESS AGREEMENT

**NOTE:** If required, the party granted relief must bring the merchandise into compliance, or export the merchandise under Customs supervision. However, exportation or remission for export may not be permitted, if that release would adversely affect health, safety or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

3. The disposition set forth in these guidelines may be applied in determining the criteria for early release of merchandise seized under 19 U.S.C. 1595a(c). The Fines, Penalties and Forfeitures Officer may authorize early release for less than the domestic value of the

merchandise, where such does not exceed \$100,000. If the domestic value exceeds \$100,000, such request for early release must be approved by the Chief, Penalties Branch.

4. Extraordinary factors not specified in these guidelines may justify deviation from the specific dispositions set forth herein.

## B. Dispositions

### 1. First Offense

No aggravating factors – remission upon payment of:  
10 – 30% of the dutiable value of the seized goods

### 2. Second Offense

No aggravating factors – remission upon payment of:  
30 – 50% of the dutiable value of the seized goods

### 3. Third or Subsequent Offense

Remission upon payment of 50 - 80% of the dutiable value of the seized goods

### 4. First Offense

Aggravating factors – remission upon payment of:  
30 – 50% of the dutiable value of the goods

### 5. Second Offense (and subsequent offenses)

Aggravating factors – remission upon payment of:  
50 – 80% of the dutiable value of the seized goods

## C. Special Circumstances

The disposition set forth below shall apply to any seizure under section 1595a(c) (or penalty under section 1595a(b) for violation of a statute other than 19 U.S.C. 1448 or 19 U.S.C. 1499, the guidelines for which are found in T.D. 99-29 and the Penalties section of this Handbook), when the circumstances prescribed below are found to exist. Thus, when applicable, these dispositions will apply instead of the “Normal Dispositions” set forth above.

1. MISTAKE OF FACT OR CLERICAL ERROR (as defined under 19 C.F.R. 162.71(c), (d)). If the sole cause of the introduction or

attempted introduction contrary to law results from either mistake of fact or clerical error, remit the seizure in full.

2. EXTENUATING CIRCUMSTANCES: Remission may be granted in full, when justified by the equities relating to the violation for which seizure was made.
3. CRIMINAL CONVICTION OF OWNER OF SEIZED MERCHANDISE IN CONNECTION WITH TRANSACTION LEADING TO SEIZURE: No remission. Deny petition for relief and seek forfeiture of seized merchandise.
4. PRE-COLUMBIAN ART/ARTIFACTS SEIZURES: Contact the Penalties Branch, OR&R, for action to be taken on seizure. This action is necessary due to the status of such merchandise under various treaties with foreign governments or federal law.

#### D. Definitions of Factors Utilized Under Normal Dispositions

1. HOW TO DETERMINE SECOND, THIRD, OR SUBSEQUENT OFFENSES:
  - a. The shipment currently under seizure has been imported by or on behalf of a person or entity whose merchandise has been seized under section 1595a(c) within a 1-year period prior to the instant seizure, and such prior forfeiture claim was not remitted in full.

#### EXAMPLE:

Larry's Lingerie introduced, on August 19, 1999, a shipment of ladies' braziers that were manufactured in Cambodia. The seizing inspector, through conducting a thorough examination, determined that the visas included in the entry packet were counterfeit. Accordingly, the shipment was seized under 19 U.S.C. 1595a(c)(3). The merchandise was later remitted to Larry, for export only, after he complied with the conditions of release set forth by the FP&F office.

On December 27, 1999, Larry, thinking lightning could not strike twice, attempted to import a shipment of tie-die tee shirts, which he intended to sell at the upcoming Neil Diamond concert. An ever-inquisitive inspector examined the shirts and discovered that they were marked "Made In The U.S.A.," although all of the entry documents indicated that they were made in India. The inspector seized the shipment under 19 U.S.C. 1595a(c)(2)(E).

- b. Under these facts, Larry was twice unlucky, and, under the mitigation guidelines, the prior offense will cost him dearly. The seizure of August 1999, represents the first offense, thus elevating the mitigated amount for the latter seizure.

## 2. MITIGATING FACTORS

- a. Prior Good Record of the violator
- b. Inexperience in importing
- c. Cooperation with Customs (or agency officials) in ascertaining the facts establishing the violation

## 3. AGGRAVATING FACTORS

- a. Criminal Conviction relating to the subject transaction. The criminal violation relating to the transaction resulting in the seizure need not have been committed by the petitioner for this aggravating factor to exist.
- b. Repetitive violations of the same import restriction involved in the seizure. This includes violations for which no seizures had been made.
- c. Evidence of intentional importation contrary to law.

### EXAMPLE:

Importer introduces scarves from India under textile quota visa applicable to tablecloths. Evidence established that the scarves were introduced under a visa applicable to tablecloths because the shipper could not obtain a visa for scarves. Thus, Importer directed Shipper to have the scarves described in the invoices as tablecloths and introduced under the visa applicable for such in order to avoid the quota visa restriction applicable to scarves.

There exists an AGGRAVATING FACTOR since the evidence establishes that the introduction of the scarves contrary to the laws implementing the Bilateral Textile Agreement between the United States and India was intentional.

**NOTE:** 19 U.S.C. 1595a(a) REMISSION OF SEIZED MERCHANDISE USED TO FACILITATE IMPORTATIONS CONTRARY TO LAW.

If it is determined that the merchandise was **ACTUALLY** used to conceal violative property, proceed with mitigation under the guidelines applicable to 1595a(c) seizures.