

GUIDANCE FOR REIMBURSEMENT CERTIFICATES

The current Department of Commerce (Commerce) regulations require that, prior to liquidation and the assessment of antidumping (AD) duties, the importer is required to file a certificate advising whether it has entered into an agreement or otherwise has received reimbursement of AD duties. If an importer fails to provide a statement of reimbursement prior to liquidation, CBP should presume reimbursement and double the duties.

Importers may also make non-reimbursement statements through ACE. Non-reimbursement statements fulfill (in electronic format) the same requirements as reimbursement certificates.

Since Commerce began administering the AD laws in 1980, Commerce's regulations governing deadlines for filing the reimbursement certificate have undergone significant changes. Thus, depending upon the regulation that was in effect at the time of entry, the importer may or may not have missed the relevant deadline for filing the certificate. CBP field offices should apply the regulation that was in effect at the time of entry.

- Prior to February 5, 1980, the regulations required the importer to file the reimbursement certificate before CBP proceeded with appraisal of the merchandise. See 19 C.F.R. §153.49 (1979).
- From February 5, 1980 to April 26, 1989, the regulations required the importer to file the reimbursement certificate within 30 days after the earlier of (1) publication of the order or any administrative review thereof, or (2) importation of the merchandise into a port where it was not previously imported. See 19 C.F.R. §353.26.
- The regulations that became effective on April 27, 1989, require importers to file the reimbursement certificate prior to liquidation. See 19 C.F.R. §351.402(f). Liquidation occurs on the date that the bulletin notice of liquidation is posted in the Customhouse. The importer of record has until the bulletin is posted to provide CBP with the certificate of reimbursement.

1. Notification of Certificate of Reimbursement Requirement

Commerce's Federal Register (FR) notices for preliminary and final results of administrative reviews notify importers of their responsibility to file a certificate of reimbursement of AD duties prior to liquidation of the relevant entries during the review period. The notice also states that failure to comply could result in the Secretary's (Commerce) presumption that reimbursement of AD duties occurred and the subsequent assessment of double the AD duties. Commerce AD/CVD instructions to CBP notify CBP of the requirement for the reimbursement certificate.

2. Individual Certificates

Individual certificates of reimbursement should contain the following language:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter, of all or any part of the antidumping duties or countervailing duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of antidumping notice suspending liquidation in the Federal Register) or purchased before (same date) but exported on or after (date of Final determination of sales at less than fair value).

3. Blanket Certificates of Reimbursement

Blanket certificates of reimbursement may be accepted provided the certificate addresses:

1. The time period that the certificate applies to, which is either 12 months or the administrative review period, whichever is longer.
- ii. The specific AD case number.
- iii. The manufacturer.

CBP's policy on this issue is that an importer may file, on an AD case-specific basis, a blanket certificate for each individual manufacturer or it may file one certificate for all manufacturers. When filing a blanket certificate for all manufacturers, an importer must specifically state that the blanket certificate encompasses all manufacturers. In either case, the blanket certificate, like the individual certificate, is AD case-specific, meaning it covers a specific commodity and country, such as shrimp from Thailand (A-549-822).

An example of a blanket reimbursement form is attached to this document. This is not a CBP form so importers can utilize other formats provided they contain the information required by Commerce.

4. Signature on Certificate

An authorized officer of the company shown as the importer of record should sign the certificate. Commerce does not interpret its regulations to allow a customhouse broker to sign the reimbursement certificate.

Original signatures on reimbursement certificates are not required. Commerce has indicated that original, facsimile or photocopied reimbursement certificates are acceptable.

5. ACE Non-Reimbursement Statements

ACE gives importers the ability to provide non-reimbursement statements at the line level for entry summaries filed in ACE or blanket non-reimbursement statements at the importer account level for summaries filed in ACE or ACS. (See the ACE Entry Summary Business Rules and Process Document (Trade)). When filing an ACE entry

summary, filers should provide the AD/CVD non-reimbursement statements through ACE. Paper reimbursement certificates are still acceptable for ACE entry summaries, but are not encouraged.

Non-reimbursement statements fulfill (in electronic format) the same requirements as reimbursement certificates. When non-reimbursement statements are filed in ACE, the trade is not required to scan and attach a signed copy of a reimbursement certificate; however, CBP reserves the right to request a copy. Attachments may be made to declaration records and will be date and time stamped as a part of the created declaration electronic file. Once the trade submits a blanket non-reimbursement statement record in ACE, it is considered to be submitted according to CBP regulations and filed at every port of entry. ACE blanket non-reimbursement statement records apply to both ACE and ACS entries.

CBP users and authorized trade participants will be able to search for and display declaration records in ACE. The ACE entry summary line non-reimbursement statement will be visible in the AD/CVD tab on the ACE entry summary line.

6. When Exporter is Importer of Record

Sometimes the exporter and importer of record are the same party. When the exporter and importer of record are the same company, the importer of record is required to submit the reimbursement certificate.

7. Importer Acknowledges Reimbursement

If the importer acknowledges reimbursement, an amount equal to the reimbursement, but not more than twice the AD duties, should be assessed.

8. Failure to Submit Certificate of Reimbursement

CBP does not issue a CBP Form 28 (Request for Information) or a proposed CBP Form 29 (Notice of Action) to request reimbursement certificates (unless the Commerce message instructs CBP to do so).

However, if a reimbursement certificate is provided prior to the posting of the entry to the liquidation bulletin, then doubling the AD duties is not appropriate.

9. Importers who are No Longer in Business

Once CBP establishes the appropriate deadline for providing the reimbursement certificate, CBP must determine whether or not the importer missed the relevant deadline prior to going out of business. If the importer was still in business after the deadline passed, the importer should have filed the reimbursement certificate. See HQ Ruling number HO 230316 dated May 10, 2004.

10. Deemed Liquidated Entries

When an entry has deemed liquidated, Import Specialists should not double the AD duties, since the entries have deemed liquidated at the rate asserted at the time of entry.

11. Countervailing Cases

On May 19, 1997, (62 FR 27295-27424; 19 CFR 351.402(f) (1) (i)), Commerce's International Trade Administration published revised regulations on antidumping and countervailing duty proceedings. Included in this FR notice was a section titled "Explanation of the Final Rules" where Commerce determined that only in the case where merchandise is subject to both AD duties and CVD is a reimbursement certificate required for CVD lines. **Commerce will indicate in final liquidation instructions when this rule applies.**

12. Protests Involving Reimbursement Certificates

On November 23, 2011, Commerce clarified that reimbursement certificates may be submitted in a CBP protest in order to rebut the presumption of reimbursement. At this time, Commerce began including the following language in its liquidation instructions:

If an importer timely files a protest challenging the presumption of reimbursement and doubling duties, consistent with CBP's protest process, CBP may accept the reimbursement statement filed with the protest to rebut the presumption of reimbursement.

Commerce also clarified that even if liquidation instructions (including liquidation instructions issued prior to November 23, 2011) did not contain this language, CBP may accept reimbursement certificates during a protest proceeding to rebut the presumption of reimbursement.

When importers file a timely protest challenging CBP's doubling of duties for the failure to provide a reimbursement certificate, and provide a valid reimbursement certificate with the protest, CBP shall grant the protest with respect to this issue.

BLANKET STATEMENT OF NON-REIMBURSEMENT

DATE: _____

IMPORTER:

MANUFACTURER:

ANTIDUMPING CASE NUMBER:

I hereby certify that I have not entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter of all or any part of the antidumping duties upon all shipments of:

COMMODITY _____ FROM
COUNTRY _____

Which have been and/or will be exported by this company.

This blanket applies to importations on or after MMDDCCYY through MMDDCCYY.¹ I further certify that U.S. Customs and Border Protection will be notified if there is any reimbursement of antidumping duties by the manufacturer, producer, seller, or exporter to the importing company at any time in the future.

INFORMATION REGARDING ANY REFUND OF ANTIDUMPING DUTIES MUST BE SENT IMMEDIATELY TO THE PORT DIRECTOR WHERE THIS CERTIFICATE IS FILED.

FAILURE TO FILE THIS CERTIFICATE PRIOR TO LIQUIDATION WILL RESULT IN THE PRESUMPTION OF REIMBURSEMENT AND THE ASSESSMENT OF DOUBLE ANTIDUMPING DUTIES.

SIGNATURE OF COMPANY OFFICIAL

PRINTED OR TYPED NAME OF ABOVE OFFICIAL

TITLE OF COMPANY OFFICIAL

NOTE: AN OFFICER OF THE IMPORTING COMPANY MUST SIGN THIS CERTIFICATE. IT MAY NOT BE SIGNED BY A CUSTOMHOUSE BROKER ON BEHALF OF THE CLIENT.

¹ The time period for a blanket certificate of reimbursement is either 12 months or the administrative review period, whichever is longer.