

GUIDELINES FOR REMISSION OF FORFEITURES AND MITIGATION OF PENALTIES FOR VIOLATION OF THE CLEAN DIAMOND TRADE ACT

These provisions and procedures are applicable when rough diamonds are imported into, or exported from, the United States in contravention of the Clean Diamond Trade Act (CDTA), which is codified at 19 U.S.C. 3901 *et seq.* Regulations implementing the CDTA are found at 31 CFR Part 592 (the Rough Diamonds Control Regulations). Under the CDTA, the importation into, or exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS), is prohibited. 19 U.S.C. 3903; 31 CFR 592.201(a).

The Department of the Treasury issued a Final Rule (“Inflation Adjustment of Civil Monetary Penalties”) in the Federal Register (83 Fed. Reg. 11876) on March 19, 2018, which was effective on that day. In that Final Rule, among other things, the Department of the Treasury adjusted the maximum penalty amount which may be assessed pursuant to 19 U.S.C. 3907(a)(1) and 31 CFR 592.602(a)(1). Where CBP Dec. 09-07 referenced the maximum penalty and mitigation amounts prior to the inflation adjustments (\$10,000 maximum), those amounts have been increased in this document to reflect the new amounts in 83 Fed. Reg. 11876 (\$13,333 maximum).

Although CBP is not required to grant relief in any specific case, CBP may reference these guidelines when deciding whether to grant relief in a specific case and, if CBP deems that relief is appropriate, to determine the mitigation, remission, or cancellation amount. CBP reviews the specific facts and circumstances of each case individually and may deviate from these guidelines if CBP determines that such deviation is appropriate. Pursuant to 19 U.S.C. 1618, 1623, as well as other applicable regulatory authorities, duly authorized CBP officials are entitled to grant relief under such terms and conditions as they deem appropriate, sufficient, reasonable and/or just.

I. Violator’s Liability

- A. Seizure and forfeiture of the shipment of rough diamonds pursuant to 19 U.S.C. 1595a(c)(2)(B) and 19 U.S.C. 1959a(c)(2)(A) for importation, or 19 U.S.C. 1595a(d)¹ for exportation, and/or
- B. A penalty not to exceed \$13,333. 19 U.S.C. 3907(a)(1); 31 CFR 592.601(a)(1).

II. Forfeiture Remission

Remission of any forfeiture of shipments of rough diamonds found to be imported into, or exported from, the United States in a manner that was not controlled through the KPCS may be granted only in extraordinary circumstances, where it is

¹ Rough diamonds that are exported in violation of the CDTA are subject to seizure and forfeiture pursuant to 22 U.S.C. 401 in addition to 19 U.S.C. 1595a(d).

established by substantial evidence that: (i) the rough diamonds were, at one time, controlled through the KPCS, and (ii) the actual custody and control of the diamonds, since falling out of control of the KPCS, is fully established. In such extraordinary circumstances, the deciding officer may, within his or her discretion, remit shipments of rough diamonds pursuant to the guidelines applicable to the statute under which the seizure was effected. CBP may require the petitioner to export the seized diamonds from the United States.

III. Penalty Mitigation

For a penalty assessed at the statutory maximum, the following applies:

A. There shall be no mitigation if there is evidence that gives CBP reason to believe there was tampering or that the CDTA violation was intentional.

B. Mitigated Penalty for First Offense.

For violations that constitute the first offense, the liabilities shall be remitted upon payment of an amount between \$3,000 and \$13,333, depending on the presence of mitigating factors.

C. Mitigated Penalty for Second Offense.

For violations that constitute the second offense, the liabilities shall be remitted upon payment of an amount between \$5,000 and \$13,333, depending on the presence of mitigating factors.

D. Mitigated Penalty for Third Offense.

For violations that constitute third or subsequent offenses, there shall be no mitigation.

IV. Mitigating Factors

A. Mitigating Factors.

1. Substantial evidence that: (i) the rough diamonds were, at one time, controlled through the KPCS, and (ii) the actual custody and control of the diamonds, since falling out of control of the KPCS, is fully established.
2. Prior good record of the violator.
3. The deciding officer determines there has been contributory U.S. government error.

Mitigation Guidelines: Clean Diamond Trade Act

B. Extraordinary Mitigating Factors.

If extraordinary mitigating factors are present, the deciding officer may, within his or her discretion, mitigate to an amount below those provided for in these guidelines.