

accordance with Subparagraph C(1) above, the surety shall be charged an administrative fee of \$1,000 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of an amount equal to the collected but unremitted fees.

D. Referral of petitions to Headquarters.

The FP&F Officer may always refer a petition for relief to Customs Headquarters, Penalties Branch, for advice or guidance. This referral is at the discretion of the FP&F Officer and shall not be allowed to a petitioner as a matter of right.

**II. Guidelines for Cancellation of Claims for Liquidated Damages for Violation of Temporary Importation Bonds (19 C.F.R. 10.39) (T.D. 94-38)**

- A. Claims are assessed for two times the duties plus merchandise processing fees or 110 percent of the duties plus merchandise processing fees.

**NOTE:** Do not include harbor maintenance fees in this calculation, as they are paid on TIB entries) unless such different amount has been authorized in accordance with the provisions of 19 C.F.R. 10.31(f).

- B. Cancel the claim without payment if the breach was for the benefit of the United States.
- C. Cancel the claim upon payment of an amount equal to the merchandise processing fee that would have been due on the merchandise had an entry for consumption been filed (but not less than \$100) if:
1. The breach was due wholly to circumstances beyond the importer's control and which could not have been reasonably anticipated i.e. destruction by accidental fire, documented theft
  2. Merchandise which was the subject of the entry would have been entitled to free entry as domestic products exported and returned or under any other duty-free provision.
- D. If the merchandise was exported or destroyed timely but Customs was not notified in a timely manner so as to cancel the bond, cancel the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the claim (depending on aggravating or mitigating factors present), but not less than \$100.

- E. If the merchandise was exported or destroyed but outside the bond period, cancel the claim for liquidated damages upon payment of an amount between 5 and 10 percent of the claim (depending on aggravating or mitigating factors present), but not less than \$200.
1. Examples of aggravating factors:
    - a. Importer is uncooperative, e.g., fails to provide information to Customs.
    - b. A large number of violations of this type by the importer in relation to the total number of transactions engaged in.
    - c. Importer's willful disregard of or carelessness toward responsibilities under applicable statutes, regulations or bond.
  2. Examples of mitigating factors:
    - a. Importer cooperates with Customs personnel in resolution of the case.
    - b. Importer takes immediate remedial action.
    - c. Lack of experience in importing.
    - d. A small number of violations of this type in relation to the number of transactions engaged in.
- F. If Customs designates a TIB entry for examination upon exportation or for supervision of destruction and the importer fails to obtain export examination or supervision of destruction, cancel the claim upon payment of an amount between 10 and 25 percent of the claim, but not less than \$300, depending on the presence of aggravating or mitigating factors.
- G. If the merchandise is sold domestically, the following guidelines should be followed
1. Grant relief equal to one times the duty on merchandise which is sold but later exported within the bond period.
  2. Grant relief to one and one-half times the duty on merchandise, which is sold but later exported outside the bond period.
  3. If merchandise is sold but later exported outside the bond period, grant no relief if the bond amount represents 110 percent of the duties on the merchandise.
- H. Grant no relief from the claim for liquidated damages in the following cases:

1. When the merchandise has entered into the commerce of the United States. If a petitioner claims the merchandise has been exported or destroyed, but does not present satisfactory proof of such exportation or destruction, the merchandise shall be presumed to have entered the commerce for purposes of these guidelines.
2. When the importer requests that a TIB entry be amended to a consumption entry after the merchandise has been released from Customs custody.
3. When TIB merchandise is sold, but not exported.

### **III. Guidelines for Cancellation of Claims Involving Carnets (T.D. 02-20)**

#### **A. Assessment of claims**

1. Articles entered under an ATA or TECRO/AIT carnet must be re-exported or destroyed prior to the expiration of the carnet period.
2. Failure to re-export or destroy those articles in the time period prescribed will result in the assessment of liquidated damages in an amount equal to 110 percent of the duties due on said articles.
3. The term “duties” shall not include Merchandise Processing Fees or Harbor Maintenance Fees for carnet claim assessment purposes.
4. All claims are assessed against the guaranteeing association, the United States Council for International Business (USCIB).
5. No claim may be established more than one year after the expiration of the period for which the carnet was valid.

#### **B. Petitions for relief**

1. Petitions for relief must be filed within 6 months of the date of the claim.
2. The petition must provide proof of re-exportation or destruction of the articles.
3. If no petition is submitted in the 6-month period, the USCIB must provide full payment of the claim.