



## **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).

On April 10, 2009, U.S. Customs and Border Protection (CBP) published mitigation guidelines for CDTA violations in the Customs Bulletin and Decisions as CBP Decision (CBP Dec.) 09-07. The guidelines in CBP Dec. 09-07 referenced the penalty amount of \$10,000 as originally provided in 19 U.S.C. 3907(a)(1) and 31 CFR 592.601(a)(2). As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“FCPIA Act”), the Department of the Treasury subsequently adjusted the maximum penalty amount which may be assessed pursuant to 19 U.S.C. 3907(a)(1) and 31 CFR 592.601(a)(2). Pursuant to the FCPIA Act, the Department of the Treasury has adjusted the penalty amount four times since 2016 (see, 81 Fed. Reg. 43070, 82 Fed. Reg. 10434, 83 Fed. Reg. 11876, and 84 Fed. Reg. 27714). The most recent adjustment, which was published in the Federal Register on June 14, 2019 (84 Fed. Reg. 27714), increased the penalty amount to \$13,669.

In this document, CBP is amending the CDTA mitigation guidelines to state that penalties should be assessed at an amount up to the maximum penalty amount provided for in 31 CFR 592.601(a)(2) at the time of the violation. CBP is also clarifying that the penalty can be assessed at an amount less than the maximum amount if appropriate (*e.g.*, the value of the rough diamond(s) involved in the violation is less than the maximum penalty amount or other circumstances warrant a lower amount). CBP is also increasing the maximum mitigation ranges to reflect the current maximum penalty amount of \$13,669. Note that CBP will not issue new guidelines each time the maximum penalty amount is increased pursuant to the FCPIA Act; however, CBP is amending the guidelines to state that future penalties should be assessed at the amount stated pursuant to 31 CFR 592.601(a)(2) at the time the violation occurred. In addition, CBP is amending the guidelines to state that the upper range for mitigation purposes will be the amount at which the penalty was assessed (*i.e.*, the maximum penalty amount pursuant to 31 CFR 592.601(a)(2) at the time the violation occurred).

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)<sup>1</sup> for exportation; and/or
- B. A penalty not to exceed the maximum penalty amount provided for in 31 CFR 592.601(a)(2) at the time the violation occurred. 19 U.S.C. 3907(a)(1); 31 CFR 592.601(a)(2). The penalty can be assessed at an amount less than the maximum amount if appropriate (e.g., the value of the rough diamond(s) involved in the violation is less than the maximum penalty amount or other circumstances warrant a lower amount).

## **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 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.

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<sup>1</sup> 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).

Mitigation Guidelines: Clean Diamond Trade Act

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### 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 \$13,669<sup>2</sup>, 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 \$13,669<sup>3</sup>, 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.

### 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.

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<sup>2</sup> The upper range for mitigation purposes will be the amount at which the penalty was assessed (*i.e.*, the maximum penalty amount pursuant to 31 CFR 592.601(a)(2) at the time the violation occurred).

<sup>3</sup> The upper range for mitigation purposes will be the amount at which the penalty was assessed (*i.e.*, the maximum penalty amount pursuant to 31 CFR 592.601(a)(2) at the time the violation occurred).