



**Pipeline 05-29
December 1, 2005**

TO : Customs Brokers, Importers and Others Concerned

SUBJECT : Change in Policy Regarding Submission of Duty Reimbursement Statements for Merchandise Subject to Anti-Dumping and Countervailing Duties.

This is to advise brokers, importers and other concerned members of the trade community of an important change in Customs and Border Protection (CBP) policy regarding submission of duty reimbursement statements for merchandise subject to anti-dumping and countervailing duty (19CFR351.402(f)).

Effective October 1, 2005, CBP shall no longer request reimbursement certificates, either upon receipt of the entry or upon receipt of final assessment instructions.

If no reimbursement certificate is on file or attached to the entry and the Department of Commerce's final assessment instructions so provide, CBP will double the applicable dumping and/or countervailing duty by issuing a CBP Form 29 to advise the importer of record of the action taken.

If the reimbursement certificate is not provided prior to the entry being posted to the Bulletin Notice of Liquidation, then any subsequent protest, for this issue, shall be **denied**, unless the importer of record claims to be exempt from the reimbursement statute because the exporter/producer and importer of record are the same entity. Protests claiming this exemption shall be forwarded to the Department of Commerce for their review. If, however, a reimbursement certificate is provided prior to the posting of the entry to the Bulletin, then the doubling of the AD/CVD is not appropriate.

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Area Port Director

Guidance for Certificates of Reimbursement
(11/29/2005)

Purpose

The Department of Commerce (DOC) regulations require that the importer file, prior to liquidation and the assessment of antidumping¹ (AD duties), a certificate advising whether the importer has entered into an agreement or otherwise has received reimbursement of AD duties.²

CBP field offices should keep in mind that the DOC regulations governing the deadline for filing the reimbursement certificate have undergone significant changes over the years since DOC began administering the antidumping laws in 1980. 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 reimbursement certificate.

Time Requirements for Providing Reimbursement Certificate

The regulations governing the deadline for filing the reimbursement certificate have changed over the years since DOC began administering the AD laws.

- For entries made prior to February 5, 1980, the regulations required the importer to file the reimbursement certificate before CBP (Customs) proceeded with appraisement of the merchandise.³
- For entries made from February 5, 1980 to April 26, 1989, the importer was required to file the reimbursement certificate within 30 days after the earlier of 1) publication of the order or any administrative review thereof pursuant to § 353.53, or, if appropriate, § 353.49, or 2) importation of the merchandise in a district in which not previously imported.⁴
- • The current regulation, which took effect April 27, 1989, requires the importer to file the reimbursement certificate prior to liquidation.⁵

Liquidation occurs on the date that the bulletin notice of liquidation is posted in the Customhouse. Under the current regulations, the importer of record has until the bulletin is posted to provide CBP with the statement of reimbursement. CBP field offices should apply the regulation that was in effect at the time of entry.

In 1992, DOC implemented a change in the language of the FR notices regarding the preliminary and final results of administrative reviews. The new language notifies importers of their responsibility to file a certificate of reimbursement of AD duties prior to liquidation of the entries relevant to the review period. The notice also states that failure

¹ Certificates of Reimbursement apply to Antidumping duties only.

² 19 CFR 351.402

³ 19 CFR 153.49 (1979)

⁴ 19 CFR 353.26

⁵ 19 CFR 351.402

to comply could result in the Secretary's (DOC) presumption that reimbursement of AD duties occurred and the subsequent assessment of double antidumping duties.

As a result, the responsibility to provide the reimbursement certificate has shifted to the importers. CBP field offices should no longer reject an entry summary or issue a CPB Form 28 requesting a reimbursement certificate. If the reimbursement certificate is still lacking at the time of liquidation, DOC has authorized CBP to assess double antidumping duties. In this situation, CBP field offices would issue a CBP Form 29, Notice of Action, taken, informing the importer of the doubling of the antidumping duties.⁶ If the importer acknowledges reimbursement, an amount equal to the reimbursement, but not more than twice the antidumping duties, should be assessed.

Importers Who Have Gone Out of Business Prior to Liquidation

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.

Certificates of Reimbursement

A competent officer of the importer of record must sign the certificate. DOC does not interpret its regulations to allow a customhouse broker to sign the reimbursement certificate. Also, DOC has indicated that an original, facsimile or photocopied reimbursement certificate(s) is acceptable. Thus, CBP may not require an original signature on reimbursement certificates.

The DOC recognizes two types of reimbursement certificates; either may be supplied to fulfill the requirement.

①

Individual Certificates

Individual certificates will 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).⁷

⁶ 19 CFR 152.2

⁷ 19 CFR 351.402(f)(2)

② **Blanket Certificates**

These statements must provide: 1) the specific antidumping case number(s), 2) the shipper(s), 3) and the review period covered. A blanket reimbursement certificate example is attached to this document. This is not a CBP form so importers can utilize other formats provided they contain the information required by DOC. The time period for which a blanket certificate of reimbursement is applicable is the longer of either 12 months or the administrative review period. Blanket certificates, on file at a port office, dated prior to this memorandum need not be replaced until the time period covered by those blankets expire. Ports with open blanket certificates, no specified end date, must request replacement certificates with an end date. All new blankets must comply with the time periods cited in this memorandum.

Result of Failure to Provide Reimbursement Certificates

If DOC instructs that reimbursement applies and the importer fails to provide a statement of reimbursement prior to liquidation, CBP should presume reimbursement and double the AD duties due.

Protests involving Reimbursement Certificates

Any protest of an entry made on and after April 27, 1989, in which the protestant argues that a reimbursement certificate filed after the bulletin notice of liquidation was posted complies with the time period set in 19 CFR 351.402 should be denied. CBP's position for entries made on and after April 27, 1989, is that, in order for a reimbursement certificate to be considered timely filed, it must be filed before liquidation of the entry, i.e., before the date that the bulletin notice of liquidation is posted in the Customhouse.

In contrast, a protest in which the protestant disputes the *assessment* under 19 CFR 351.402, that does not involve the timeliness of filing the reimbursement certificate, should be sent to the Department of Commerce for review and recommendation as to the disposition. Ports should follow the current procedure for sending protests to the DOC.⁸

Countervailing Duty (CVD) Cases

DOC's position is, unless stated otherwise, CBP should not require a reimbursement certificate for CV cases. Therefore, the DOC will provide specific instructions if and when a reimbursement certificate is required for entries subject to CV duties.

Source Document:

Memorandum From: Executive Director, Trade Enforcement and Facilitation

Titled: Guidance for Certificates of Reimbursement

Dated: November 18, 2005

⁸ Protest/Petition Processing Handbook, January 2002