

Subpart B—Damaged or Defective Merchandise

§ 158.11 Merchandise completely worthless at time of importation.

(a) *Nonperishable merchandise.* When a shipment of nonperishable merchandise, or any portion thereof which shall have been segregated from the remainder of the shipment under Customs supervision at the expense of the importer, is found by the port director to be entirely without commercial value at the time of importation by reason of damage or deterioration, an allowance in duties on such merchandise on the ground of nonimportation shall be made in the liquidation of the entry.

(b) *Perishable merchandise.* In the case of perishable merchandise, an allowance in duties may be made under the following conditions:

(1) An application for such allowance shall be filed with the port director on Customs Form 4315 in duplicate, within 96 hours after the unloading of the merchandise and before any of the shipment involved has been removed from the pier (or other area permitted under § 142.2(b)(2) of this chapter) pursuant to the entry permit.

(2) Should an application filed in accordance with paragraph (b)(1) of this section be withdrawn, the merchandise involved shall thereafter be released upon presentation of an appropriate permit.

(3) Allowance in duty shall be made in the liquidation of the entry on such of the merchandise covered by the application as is found by the port director to be entirely without commercial value by reason of damage or deterioration.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 76-220, 41 FR 33248, Aug. 9, 1976]

§ 158.12 Merchandise partially damaged at time of importation.

(a) *Allowance in value.* Merchandise which is subject to ad valorem or compound duties and found by the port director to be partially damaged at the time of importation shall be appraised in its condition as imported, with an

allowance made in the value to the extent of the damage. However, no allowance shall be made when forbidden by law or regulation; for example, Chapter 72, Additional U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), provides that no allowance or reduction of duties for partial damage or loss in consequence of discoloration or rust occurring before importation shall be made upon iron or steel or upon any article of iron or steel.

(b) *No allowance in specific duties.* In the case of merchandise subject to specific or compound duties and found to be partially damaged at the time of importation, no allowance may be made in the specific duties or in the weight, quantity, or measure (except that an allowance for any excessive moisture or other impurities may be made in accordance with § 158.13). However, any part of the shipment which is totally worthless and can be segregated from the rest of the shipment may be treated as a nonimportation in accordance with § 158.11.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 89-1, 53 FR 51270, Dec. 21, 1988]

§ 158.13 Allowance for moisture and impurities.

(a) *Application by importer—(1) Petroleum and petroleum products.* An application for an allowance in duties under section 507, Tariff Act of 1930, as amended (19 U.S.C. 1507), for all detectable moisture and impurities present in or upon imported petroleum or petroleum products shall be made by the importer on Customs Form 4315. The application shall be filed with the port director within 10 days of the port director's receipt of the gauging report or within 10 days of Customs acceptance of the entry's invoice gauge.

(2) *Other products.* An application for an allowance in duties under 19 U.S.C. 1507 for products other than petroleum or petroleum products for excessive moisture or other impurities not usually found in or upon such or similar merchandise shall be made by the importer on Customs Form 4315. The application shall be filed with the port director within 10 days after the report

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of weight or gauge has been received by the port director or within 10 days after the date upon which the entry or a related document was endorsed to show that invoice weight or gauge has been accepted by the Customs inspector or other Customs officer.

(b) *Allowance by port director.* If the port director is satisfied after any necessary investigation that the merchandise contains moisture or impurities as described in paragraph (a) of this section, he shall make allowance for the amount thereof in the liquidation of the entry.

[T.D. 90-78, 55 FR 40167, Oct. 2, 1990]

§ 158.14 Perishable merchandise condemned.

(a) *Application by importer.* When fruit or other perishable merchandise has been condemned by health officers or other legally constituted authorities within 10 days after landing, an importer who desires allowance in duties under section 506(2), Tariff Act of 1930, as amended (19 U.S.C. 1506(2)), shall within 5 days after such condemnation file with the port director written notice of the condemnation. The date of landing in the case of merchandise forwarded under an entry for immediate transportation is the date of arrival at the port of destination.

(b) *Allowance in duties.* If the port director is satisfied after any necessary investigation that the claim is valid, allowance in duties shall be made in the liquidation of the entry. Such allowance shall be limited to perishable goods condemned by the health officers or authorities in the original package, unless segregation of the merchandise was under constant Customs supervision at the importer's expense.

(Sec. 506(2), 46 Stat. 732, as amended; 19 U.S.C. 1506(2))

Subpart C—Casualty, Loss, or Theft While in Customs Custody

§ 158.21 Allowance in duties for casualty, loss, or theft while in Customs custody.

Section 563(a), Tariff Act of 1930, as amended (19 U.S.C. 1563(a)), provides for allowance in duties upon satisfactory proof of the loss or theft of any

merchandise while in the public stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the public stores, or while in transportation under bond, or while in Customs custody although not in bond, or while within the limits of any port of entry and before having been landed under Customs supervision. Such allowance is subject to the conditions set forth in this subpart.

§ 158.21a Time period.

An abatement or refund of duties shall be made in the case of injury to, or destruction of, merchandise in a bonded warehouse as a result of accidental fire or other casualty only if the fire or casualty occurs within 3 years from the date of importation.

[T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 158.22 Not applicable when allowances made under other provisions.

The procedures in this subpart do not apply in cases where allowances in duties are made under subpart A or subpart B of this part, or §18.6 of this chapter.

§ 158.23 Filing of application and evidence by importer.

Within 30 days from the date of his discovery of the loss, theft, injury, or destruction, the importer shall file an application in duplicate on Customs Form 4315, and within 90 days from the date of discovery shall file any evidence required by §158.26 or §158.27.

§ 158.24 Place of filing.

The application and evidence shall be filed with the director of the port where the loss, theft, injury, or destruction occurred. In the case of total loss of merchandise by fire or other casualty while in transportation under bond, the application and evidence shall be filed with the director of the port at which the transportation entry was made. In the case of partial destruction of or injury to such merchandise, the application and evidence shall be filed with the director of the port of destination, except that if the merchandise is returned to the port at which the transportation entry was