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probable that the expenses of sale will exceed the proceeds. If the merchandise is sold, no part of the proceeds shall be returned to the importer.

(c) *Disposition of worthless merchandise.* If the merchandise or any part thereof is worthless or it appears probable that the expenses of its sale will exceed the proceeds, it shall be destroyed or otherwise disposed of as the port director shall specify. The port director shall insure that such merchandise is destroyed or removed from the control of the importer to avoid the possibility of any part of the same merchandise being made the subject of another application.

(Secs. 506(1), 563(b), 46 Stat. 732, as amended, 746, as amended; 19 U.S.C. 1506(1), 1563(b) R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 77-12, 41 FR 56629, Dec. 29, 1976]

### § 158.45 Exportation of merchandise.

(a) *From continuous Customs custody.* Merchandise in Customs custody for which entry has not been completed and merchandise which has remained in continuous Customs custody that is covered by a liquidated or unliquidated consumption entry may be exported under Customs supervision in accordance with §§18.25 through 18.27 of this chapter, with refund of any duties that have been paid.

(b) *After release from Customs custody.* Except as provided for in paragraphs (c) and (d) of this section, no refund or other allowance in duties shall be made because of the exportation of merchandise after its release from Customs custody unless a drawback of duties is expressly provided for by law (see part 191 of this chapter).

(c) *Prohibited merchandise.* If merchandise has been regularly entered or withdrawn for consumption in good faith and is thereafter found to be prohibited entry under any law of the United States, it may be exported under Customs supervision in accordance with §§18.25 through 18.27 of this chapter, with refund of any duties that have been paid. In lieu of exportation, the merchandise may be destroyed in accordance with §158.41.

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(d) *Not legally marked merchandise.* When merchandise found to be not legally marked is exported or destroyed under Customs supervision after once having been released from Customs custody, as provided for in section 304(f), Tariff Act of 1930, as amended (19 U.S.C. 1304(f)), such exportation or destruction shall not exempt such merchandise from the payment of duties other than the marking duties.

(Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558; R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 83-212, 48 FR 46771, Oct. 14, 1983; T.D. 90-51, 55 FR 28191, July 10, 1990]

## PART 159—LIQUIDATION OF DUTIES

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AUTHORITY: 19 U.S.C. 66, 1500, 1504, 1624.

Subpart C also issued under 31 U.S.C. 5151.

Subpart D also issued under 19 U.S.C. 1671 *et seq.*

Subpart F also issued under 19 U.S.C. 1675c. Sections 159.4, 159.5, and 159.21 also issued under 19 U.S.C. 1315;

Section 159.6 also issued under 19 U.S.C. 1321, 1505;

Section 159.7 also issued under 19 U.S.C. 1557;

Section 159.22 also issued under 19 U.S.C. 1507;

Section 159.44 also issued under 15 U.S.C. 73, 74;

Section 159.46 also issued under 19 U.S.C. 1304;

Section 159.55 also issued under 19 U.S.C. 1558;

Section 159.57 also issued under 19 U.S.C. 1516.

SOURCE: T.D. 73-175, 38 FR 17482, July 2, 1973, unless otherwise noted.

### § 159.0 Scope.

This part sets forth general rules for the liquidation of entries. Certain specific procedures affecting liquidation appear in other parts of this chapter; e.g., part 158 of this chapter covers al-

lowance for lost or damaged merchandise.

## Subpart A—General Provisions

### § 159.1 Definition of liquidation.

*Liquidation* means the final computation or ascertainment of duties on entries for consumption or drawback entries.

[T.D. 01-24, 66 FR 16400, Mar. 26, 2001, as amended by CBP Dec. 11-02, 76 FR 2576, Jan. 14, 2011]

### § 159.2 Liquidation required.

All entries covering imported merchandise, except temporary importation bond entries and those for transportation in bond or for immediate exportation, shall be liquidated. Vessel repair entries are not subject to liquidation under this part (see § 4.14(i)(3) of this chapter).

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 01-24, 66 FR 16400, Mar. 26, 2001]

### § 159.3 Rounding of fractions.

(a) *Value.* In the computation of duty on entries, ad valorem rates shall be applied to the values in even dollars, fractional parts of a dollar less than 50 cents being disregarded and 50 cents or more being considered as \$1, with all merchandise in the same invoice subject to the same rate of duty to be treated as a unit. However, the total dutiable value of the invoice shall not be increased or decreased by more than the rounding of the total dutiable value to an even dollar. When necessary, fractional parts of a dollar, whether more or less than 50 cents, shall be dropped or taken up as whole dollars in order to avoid such an increase or decrease. If in such cases it is necessary to drop fractional parts of a dollar amounting to 50 cents or more, the lower fractions shall be dropped, and if it is necessary to take up as whole dollars fractional parts less than 50 cents, the larger fractions shall be taken. In the case of two equal fractions, the one subject to the lower rate of duty shall be dropped or taken up, as the case may be. In determining a rate

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of duty dependent upon value, fractional parts of a dollar shall be considered.

(b) *Quantities subject to specific duty.* Except in the case of alcoholic beverages treated under §159.4, if a rate of duty is specific and \$1 or less per unit, fractional quantities, if less than one-half, shall be disregarded, and if one-half or more shall be treated as a whole unit. Subject to the same exception, if a specific rate is more than \$1 per unit, duty shall be assessed upon the exact quantity with any fractional part expressed in the form of a decimal extended to two places.

### § 159.4 Alcoholic beverages.

(a) *Quantities subject to duties.* Customs duties and internal revenue taxes on alcoholic beverages provided for in headings 2207 and 2208, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), and subject to internal revenue taxes shall be collected only on the number of proof gallons and fractional parts thereof, entered or withdrawn for consumption. No internal revenue tax shall be collected on distilled spirits in bulk which have been transferred to Internal Revenue bonded premises in accordance with §141.102(b) of this chapter. Customs duties and internal revenue taxes on alcoholic beverages other than subheadings 2206.00.30 and 2206.00.90, HTSUS, and distilled spirits provided for in headings 2207 and 2208, shall be collected only on the number of wine gallons and fractional parts thereof, entered or withdrawn for consumption.

(b) *Computation of duties.* In the computation of Customs duties on alcoholic beverages provided for in headings 2207 and 2208 (19 U.S.C. 1202), which are also subject to internal revenue taxes, the methods prescribed for the computation of internal revenue taxes on such beverages shall be followed. The following methods apply to the specific beverages shown:

(1) *Distilled spirits.* The quantity of distilled spirits imported in barrels, kegs, or similar containers shall be ascertained in accordance with the regulations of the Bureau of Alcohol, Tobacco and Firearms. Where distilled spirits are imported in bottles, jugs, or similar containers, Customs duties and

taxes shall be collected on the exact quantity contained in each case or other outer container, fractional parts of a gallon being carried out to three decimal places utilizing the proof gallon method of computation.

(2) *Wine.* Customs duties and taxes on wines shall be on the basis of a wine gallon of liquid measure equivalent to 231 cubic inches and shall be paid proportionally on all fractional parts of a wine gallon. Fractions of less than one-tenth gallon shall be converted to the nearest one-tenth gallon, and five-hundredths gallon shall be converted to the next full one-tenth gallon.

(3) *Beer and similar fermented beverages.* Customs duties and taxes on beer, ale, porter, stout, and other similar fermented beverages, including sake, of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, shall be collected in accordance with section 5051(a), Internal Revenue Code of 1954 (26 U.S.C. 5051(a)).

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 78-329, 43 FR 43455, Sept. 26, 1978; T.D. 80-271, 45 FR 75641, Nov. 17, 1980; T.D. 89-1, 53 FR 51270, Dec. 21, 1988]

### § 159.5 Cigars, cigarettes, and cigarette papers and tubes.

The internal revenue taxes imposed on cigars, cigarettes, and cigarette papers and tubes under section 5701 or 7652, Internal Revenue Code of 1954 (26 U.S.C. 5701 or 7652), are determined in accordance with section 5703 of that Code (26 U.S.C. 5703) at the time of removal; that is, on the quantity removed from Customs custody under the entry or withdrawal for consumption. The Customs duties, unlike those on alcoholic beverages, do not necessarily apply only to such quantities.

### § 159.6 Difference between liquidated duties and estimated duties.

(a) *Difference under \$20 in original liquidation.* When there is a net difference of less than \$20 between the total amount of duties, fees, taxes, and interest assessed in the liquidation of any entry (other than an informal, mail, or baggage entry) and the total amount of estimated duties, fees, and

taxes deposited, including any supplemental deposit, the difference will be disregarded and the entry endorsed “as entered.” In the case of an informal, mail, or baggage entry, the amount of duties, fees, and taxes computed by a CBP officer when the entry is prepared by, or filed with, him will be considered the liquidated assessment.

(b) *Difference under \$20 in reliquidation.* When there is a net difference of less than \$20 between the total amount of duties, fees, taxes, and interest found due in the reliquidation of any entry and the total amount of duties, fees, taxes, and interest assessed in the prior liquidation of the entry, the difference will be disregarded except in the following cases:

(1) *Reliquidation at importer’s request.* When reliquidation of any entry is made at the importer’s request, such as reliquidation following the allowance of a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), or, for entries made before December 18, 2004, a request for correction under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), any refund determined to be due will be refunded even if less than \$20.

(2) *Court decision.* Any refund or increase determined to be due as the result of the reliquidation of an entry in accordance with a court decision and judgment order will be refunded or collected as the case may be.

(c) *Difference of \$20 or more collected or refunded.* If there is a difference of \$20 or more between the duties, fees, taxes, and interest assessed in the liquidation of an entry and the total estimated duties, fees, and taxes deposited, or between the total duties, fees, taxes, and interest assessed in the reliquidation of an entry and those assessed in the prior liquidation, the entry will be endorsed to show the difference and bills or refund checks will be issued.

(d) *Customs duties and fees and internal revenue taxes and interest netted for \$20 limit.* The assessments of customs duties and fees and internal revenue taxes and interest will be separately stated on the entry at the time of liquidation, but the amounts of any differences will be netted when applying

the \$20 minimum for issuance of a bill or refund check.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 78-394, 43 FR 49791, Oct. 25, 1978; T.D. 94-51, 59 FR 30296, June 13, 1994; 64 FR 56440, Oct. 20, 1999; CBP Dec. 11-02, 76 FR 2576, Jan. 14, 2011]

#### § 159.7 Rewarehouse entries.

The liquidation of the original warehouse entry shall be followed in determining the liability for duties on a rewarehouse entry, except in the following cases:

(a) *Merchandise excluded from liquidation of original warehouse entry.* When any of the following types of merchandise are withdrawn from warehouse for transportation to another port, they will be excluded from the liquidation of the original warehouse entry, and the liability for duties will be determined by a liquidation of the rewarehouse entry made at the port where the merchandise is withdrawn for consumption or for exportation:

(1) Alcoholic beverages provided for in headings 2203 through 2208, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), and subject to internal revenue taxes;

(2) Cigars, cigarettes, and cigarette papers and tubes subject to internal revenue taxes;

(3) Tariff-rate quota merchandise; and

(4) Wool or hair subject to duty at a rate per clean kilogram under Chapter 51, HTSUS.

(b) *Reliquidation required by change in rate.* When a rate of customs duty or tax is changed by an act of Congress or a proclamation of the President, any necessary reliquidation of customs duty or tax on merchandise covered by a rewarehouse entry which may be required by reason of the change in rate will be made at the port where the merchandise is held in CBP custody on the effective date of the change.

(c) *Shortage, irregular delivery, non-delivery, and other cases.* In cases involving shortage, irregular delivery, or nondelivery under the original warehouse withdrawal for transportation, or in other cases when the port director of the port where the merchandise is entered for rewarehouse is of the

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opinion that circumstances make it inadvisable to follow the liquidation of the original warehouse entry, he will make an appropriate adjustment in the amount of duties to be assessed under the rewarehouse entry.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988; T.D. 90–78, 55 FR 40168, Oct. 2, 1990; CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011]

### § 159.8 Allowance for loss, injury, etc.

Allowance in duties for any merchandise which is lost, stolen, destroyed, injured, abandoned, or short-shipped will be made in accordance with the provisions of part 158 of this chapter.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011]

### § 159.9 Notice of liquidation and date of liquidation for formal entries.

(a) *Bulletin notice of liquidation.* Notice of liquidation of formal entries will be made on a bulletin notice of liquidation, CBP Form 4333.

(b) *Posting of bulletin notice.* The bulletin notice of liquidation will be posted for the information of importers in a conspicuous place in the customhouse at the port of entry (or customs station, when the entries listed were filed at a customs station outside the limits of a port of entry), or will be lodged at some other suitable place in the customhouse in such a manner that it can readily be located and consulted by all interested persons, who will be directed to that place by a notice maintained in a conspicuous place in the customhouse stating where notices of liquidation of entries are to be found.

(c) *Date of liquidation—(1) Generally.* The bulletin notice of liquidation will be dated with the date it is posted or lodged in the customhouse for the information of importers. This posting or lodging will be deemed the legal evidence of liquidation. For electronic entry summaries, the date of liquidation will be the date of posting of the bulletin notice of liquidation. CBP will endeavor to provide the filer with electronic notification of this date as an informal, courtesy notice of liquidation.

(2) *Exception: Entries liquidated by operation of law.* (i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in §§ 159.11 and 159.12, will be deemed liquidated as of the date of expiration of the appropriate statutory period.

(ii) The bulletin notice of liquidation will be posted or lodged in the customhouse within a reasonable period after each liquidation by operation of law and will be dated as of the date of expiration of the statutory period.

(iii) Pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof is posted or lodged in the customhouse, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(d) *Courtesy notice of liquidation.* CBP will endeavor to provide importers or their agents with a courtesy notice of liquidation for all entries scheduled to be liquidated or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to an authorized electronic data interchange system if the entry summary was filed electronically in accordance with part 143 of this chapter or on CBP Form 4333–A if the entry was filed on paper pursuant to parts 141 and 142 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979; T.D. 90–1, 54 FR 52933, Dec. 26, 1989; T.D. 90–92, 55 FR 49888, Dec. 3, 1990; CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011; CBP Dec. 11–17, 76 FR 50887, Aug. 17, 2011]

**§ 159.10 Notice of liquidation and date of liquidation for informal, mail, and baggage entries.**

(a) *Usual date of liquidation.* Except in the cases provided for in paragraph (b) of this section, the effective date of liquidation for informal, mail, and baggage entries will be:

(1) The date of payment by the importer of duties due on the entry;

(2) The date of release by CBP or the postmaster when the merchandise is released under such an entry free of duty; and

(3) The date a free entry is accepted for articles released under a special permit for immediate delivery under part 142 of this chapter.

(b) *Date of liquidation when duty cannot be determined at time of entry.* When the proper rate or amount of duty cannot be determined at the time of entry because the merchandise is subject to a tariff-rate quota, because of a missing document which, if for free entry, is not produced prior to the release of the merchandise to the importer, or because of any other reason, the printed notice of liquidation appearing on the receipt issued for any money collected on the entry will be voided. When the tariff status of the merchandise either as dutiable or free is finally ascertained it will be noted on the entry. The effective date of liquidation will be the date of posting or lodging of the notice of liquidation required by paragraph (c)(3) of this section.

(c) *Notice of liquidation*—(1) *Dutiable entries.* Where duties are paid on an entry in accordance with paragraph (a)(1) of this section, notice of liquidation is furnished by a suitable printed statement appearing on the receipt issued for duties collected. No other notice of liquidation will be given, but notice of reliquidation of any such entry will be given on CBP Form 4333 posted or lodged in the place and manner specified in § 159.9(b).

(2) *Free entries.* Notice of liquidation is furnished by release of the merchandise under a free entry in accordance with paragraph (a)(2) of this section, or by acceptance of the free entry in accordance with paragraph (a)(3) of this section after release under a special permit for immediate delivery. No fur-

ther notice of the liquidation of such entries will be given.

(3) *Entries where duty cannot be determined at time of entry.* When the proper rate or amount of duty cannot be determined at the time of entry as set forth in paragraph (b) of this section, notice of liquidation will be given on a bulletin notice of liquidation, CBP Form 4333, in the manner specified in § 159.9 for formal entries.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 90-1, 54 FR 52933, Dec. 26, 1989; CBP Dec. 11-02, 76 FR 2576, Jan. 14, 2011]

**§ 159.11 Entries liquidated by operation of law.**

(a) *Time limit generally.* Except as provided in § 159.12, an entry not liquidated within 1 year from the date of entry of the merchandise, or the date of final withdrawal of all merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer at the time of filing an entry summary for consumption in proper form, with estimated duties attached, or a withdrawal for consumption in proper form, with estimated duties attached. Notice of liquidation will be given on the bulletin notice of liquidation, CBP Form 4333, as provided in §§ 159.9 and 159.10(c)(3). CBP will endeavor to provide a courtesy notice of liquidation in accordance with § 159.9(d).

(b) *Applicability.* The provisions of this section and § 159.12 will apply to entries of merchandise for consumption or withdrawals of merchandise for consumption made on or after April 1, 1979.

[T.D. 79-221, 44 FR 46829, Aug. 9, 1979, as amended by T.D. 90-1, 54 FR 52933, Dec. 26, 1989; T.D. 01-24, 66 FR 16400, Mar. 26, 2001; CBP Dec. 10-29, 75 FR 52452, Aug. 26, 2010; CBP Dec. 11-02, 76 FR 2576, Jan. 14, 2011; CBP Dec. 11-17, 76 FR 50887, Aug. 17, 2011]

**§ 159.12 Extension of time for liquidation.**

(a) *Reasons*—(1) *Extension.* The port director may extend the 1-year statutory period for liquidation for an additional period not to exceed 1 year if:

(i) *Information needed by CBP.* Information needed by CBP for the proper

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appraisal or classification of the merchandise is not available, or

(ii) *Importer's request.* The importer requests an extension in writing before the statutory period expires and shows good cause why the extension should be granted. "Good cause" is demonstrated when the importer satisfies the port director that more time is needed to present to CBP information which will affect the pending action, or there is a similar question under review by CBP.

(2) *Suspension.* The 1-year liquidation period may be suspended as required by statute or court order.

(b) *Notice of extension.* If the port director extends the time for liquidation, as provided in paragraph (a)(1) of this section, he promptly will notify the importer or the consignee and his agent and surety on CBP Form 4333-A, appropriately modified, that the time has been extended and the reasons for doing so.

(c) *Notice of suspension.* If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the port director promptly will notify the importer or the consignee and his agent and surety on CBP Form 4333-A, appropriately modified, of the suspension.

(d) *Additional extensions—(1) Information needed by CBP.* If an extension has been granted because CBP needs more information and the port director thereafter determines that more time is needed, he may extend the time for liquidation for an additional period not to exceed 1 year provided he issues the notice required by paragraph (b) of this section before termination of the prior extension period.

(2) *At importer's request.* If the statutory period has been extended for 1 year at the importer's request, and the importer thereafter determines that additional time is necessary, he may request another extension in writing before the original extension expires, giving reasons for his request. If the port director finds that good cause (as defined in paragraph (a)(1)(ii) of this section) exists, he will issue a notice extending the time for liquidation for an additional period not to exceed 1 year.

(e) *Limitation on extensions.* The total time for which extensions may be granted by the port director may not exceed 3 years.

(f) *Time limitation—(1) Generally.* An entry not liquidated within 4 years from either the date of entry, or the date of final withdrawal of all the merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted by the importer at the time of filing the entry summary for consumption in proper form, with estimated duties attached, or the withdrawal for consumption in proper form, with estimated duties attached, unless liquidation continues to be suspended by statute or court order. CBP will endeavor to provide a courtesy notice of liquidation, in accordance with § 159.9(d), in addition to the bulletin notice specified in § 159.9(c)(2)(ii).

(2) *Suspension of liquidation by statute or court order.* When liquidation of an entry continues to be suspended beyond the 4-year period specified in paragraph (f)(1) of this section due to a statute or court order, the entry will be liquidated within 90 days after removal of the suspension.

(g) *Notice of liquidation.* If an entry is liquidated after an extension expires or a suspension is removed, notice of liquidation will be given on the bulletin notice of liquidation, CBP Form 4333, as provided in §§ 159.9 and 159.10(c)(3). CBP will endeavor to provide a courtesy notice of liquidation in accordance with § 159.9(d).

[T.D. 79-221, 44 FR 46829, Aug. 9, 1979, as amended by T.D. 90-1, 54 FR 52933, Dec. 26, 1989; CBP Dec. 11-02, 76 FR 2576, Jan. 14, 2011; CBP Dec. 11-17, 76 FR 50887, Aug. 17, 2011]

### Subpart B—Weight, Gage, and Measure

#### § 159.21 Quantity upon which duties based.

Insofar as duties are based upon the quantity of any merchandise, such duties shall be based upon the quantity of such merchandise at the time of its importation, except in the following cases:

(a) *Manipulation in warehouse.* If any merchandise covered by a warehouse

entry has been cleaned, sorted, repacked, or otherwise changed in condition under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), withdrawals shall be passed and the entry liquidated on the basis of the weight, gauge, or measure of such merchandise in its manipulated condition with an appropriate notation in the duty statement that the duties are assessed on the basis of the manipulated condition of the merchandise.

(b) *Alcoholic beverages.* Duties on certain alcoholic beverages are assessed only on the quantities entered or withdrawn for consumption (see § 159.4).

(c) *Cigars, cigarettes, and cigarette papers and tubes.* Although Customs duties on cigars, cigarettes, and cigarette papers and tubes are assessed on the quantities imported, the internal revenue taxes on such merchandise are assessed only on the quantities entered or withdrawn for consumption (see § 159.5).

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 80-142, 45 FR 36386, May 30, 1980]

**§ 159.22 Net weights and tares.**

(a) *Determination of net weight.* The net weight of merchandise dutiable by net weight, or upon a value dependent upon net weight, shall be determined insofar as possible by obtaining the actual weight, or by deducting the actual or schedule tare from the gross weight. Actual tare may be determined on the basis of tests when the tares of the packages in a shipment are reasonably uniform.

(b) *Invoice net weight or tare.* When the actual net weight or tare cannot reasonably be determined and no schedule tare is applicable, liquidation may be made on the basis of the invoice net weight or tare.

(c) *Schedule tare.* The following tares, which, from experience, have proved to be the average for certain classes of merchandise shall be known as schedule tares and shall be applied, except as provided in paragraph (d) of this section:

Apple boxes. 2.984 kilograms per box. This schedule tare includes the paper wrappers, if any, on the apples.

China clay in so-called half-ton casks: 26.856 kilograms per cask.

Figs in skeleton cases: Actual tare for outer containers plus 13 percent of the gross weight of the inside wooden boxes and figs.

Fresh tomatoes: 113 grams per 100 paper wrappings.

Lemons and oranges: 283 grams per box and 142 grams per half box for paper wrappings, and actual tare for outer containers.

Ocher, dry, in casks: Eight percent of the gross weight.

Ocher, in oil, in casks: Twelve percent of the gross weight.

Pimientos in tins imported from Spain: The following schedule drained weight shall be used as the Customs dutiable weight in the liquidation of entries, the difference between the weight of the new contents of pimientos in tins and such drained weight being the allowance made in liquidation for tare for water:

Size can	Drained weight
3 kilo .....	13.6 kilograms-case of 6 tins.
794 grams .....	16.7 kilograms-case of 24 tins.
425 grams .....	8.0 kilograms-case of 24 tins.
198 grams .....	3.9 kilograms-case of 24 tins.
113 grams .....	2.4 kilograms-case of 24 tins.

Tobacco, leaf not stemmed: 5.9 kilograms per bale: Sumatra: actual tare for outside coverings, plus 1.9 kilograms for the inside matting and, if a certificate is attached to the invoice certifying that the bales contain paper wrapping and specifying whether light or heavy paper has been used, either 113 grams or 227 grams for the paper wrapping according to the thickness of paper used.

(d) *Actual tare.* In the following circumstances, the actual tare shall be ascertained and in so doing the weigher shall empty and weigh as many casks, boxes, and other coverings as he may deem necessary:

(1) If the importer is not satisfied with the invoice tare or with the schedule tare;

(2) If the port director is of the opinion that the invoice or schedule tare does not correctly represent the tare of the merchandise; or

(3) If the weigher has reason to believe that the invoice or schedule tare is greater than the real tare.

(e) *Estimated tare.* When it is impracticable to ascertain the actual tare, the weigher shall state in his report what, in his judgment, constitutes a fair tare allowance.

(f) *Weight for value purposes.* In determining the total dutiable value of merchandise which is subject to ad valorem duty and appraised on the basis of weight, liquidation shall be made on

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the same basis as appraisalment. For example, if appraisalment is made on the basis of gross weight, the unit value shall be multiplied by the total gross weight in computing the total value even though net weight may be used for other purposes in liquidation, such as in determining total specific duties.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 89-1, 53 FR 51270, Dec. 21, 1988]

## Subpart C—Conversion of Foreign Currency

### § 159.31 Rates to be used.

Except as otherwise specified in this subpart, no rate or rates of exchange shall be used to convert foreign currency for Customs purposes other than a proclaimed rate or certified rate or rates.

### § 159.32 Date of exportation.

The date of exportation for currency conversion shall be fixed in accordance with § 152.1(c) of this chapter.

### § 159.33 Proclaimed rate.

If a rate of exchange has been proclaimed by the Secretary of the Treasury in accordance with 31 U.S.C. 5151(b) for the currency involved, such proclaimed rate shall be used unless it varies by 5 percent or more from the certified daily rate for the date of exportation as set forth in § 159.35. In determining the percentage of variation between the proclaimed rate and the certified rate, the difference between the two rates shall be divided by the certified rate.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 97-82, 62 FR 51771, Oct. 3, 1997]

### § 159.34 Certified quarterly rate.

(a) *Countries for which quarterly rate is certified.* For the currency of each of the following foreign countries, there will be published in the Customs Bulletin, for the quarter beginning January 1, and for each quarter thereafter, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter:

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Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Hong Kong, India, Iran, Ireland, Italy, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, People's Republic of China, Philippines, Portugal, Republic of South Africa, Singapore, Spain, Sri Lanka (Ceylon), Sweden, Switzerland, Thailand, United Kingdom, Venezuela.

(b) *When certified quarterly rate is used.* The certified quarterly rate established under paragraph (a) of this section shall be used for Customs purposes for any date of exportation within the quarter, except in the following cases:

(1) *Proclaimed rate.* If a rate has been proclaimed by the Secretary of the Treasury under § 159.33 which does not vary by 5 percent or more from the appropriate certified daily rate, notice of such variance shall be published in the Customs Bulletin and the proclaimed rate shall be used for Customs purposes in connection with merchandise exported on such date.

(2) *Certified daily rate.* If the certified daily rate for the date of exportation varies by 5 percent or more from the certified quarterly rate, notice of such variation and the rate or rates certified for such day shall be published in the Customs Bulletin, and such certified daily rate shall be used for Customs purposes in connection with merchandise exported on such day.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 81-117, 46 FR 24944, May 4, 1981]

### § 159.35 Certified daily rate.

The daily buying rate of foreign currency which is determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury in accordance with 31 U.S.C. 5151(e) shall be used for the conversion of foreign currency whenever a proclaimed rate or certified quarterly rate is not applicable under the provisions of §§ 159.33 and 159.34. If the date of exportation is one on which banks are generally closed in New York City, then the certified daily rate for the last preceding business day shall be considered

the certified daily rate for the day of exportation.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 97-82, 62 FR 51771, Oct. 3, 1997]

**§ 159.36 Multiple certified rates.**

The following procedures shall apply when the Federal Reserve Bank of New York certifies two or more rates of exchange (e.g., official and free) for a foreign currency:

(a) *Rates to be published.* When the Federal Reserve Bank of New York certifies two or more rates of exchange for the currency of any country, those rates will be published in the Customs Bulletin.

(b) *Laws of country of exportation followed.* When multiple rates have been certified for a foreign currency, the rate to be used for Customs purposes shall be the type of certified rate which the port director is satisfied, from information in his own files, information obtained and presented to him by the importer, or information obtained from other sources, is uniformly applicable under the laws and regulations of the country of exportation to the particular class of merchandise on the date of exportation. In cases where two or more types of certified rates are uniformly applicable on a percentage bases, each type of certified rate shall be used for the percentage of value to which it is applicable. The percentages used shall be those which reflect realistically the percentage for which each type of rate is uniformly applicable under the laws and regulations of the country of exportation on the date of exportation.

(c) *Procedure when multiple certified rates not uniformly applicable.* If the port director has credible information that a type of rate or combination of types of rates which would otherwise be applicable under paragraph (b) of this section were not required or permitted, as the case may be, under the laws and regulations of the country of exportation to be used uniformly during any period in connection with the payment for all merchandise of the class involved, he shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisal and liquidation as

to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner of Customs.

(d) *Rate for merchandise different from rate for costs.* If the port director has credible information that a type of rate or combination of types of rates not applicable to payment for the merchandise was required or permitted in payment of costs, charges, or expenses, the currency conversions for the exchange covering payment for the merchandise and for the exchange covering such costs, charges, or expenses shall be calculated separately. In deducting nondutiable costs, charges, or expenses, the foreign exchange shall be at the rate or rates actually used in payment of such costs, charges, or expenses, whether or not certified in accordance with § 159.34 or § 159.35. If the costs, charges or expenses are dutiable, they shall be calculated according to the rules set forth in this subpart. In the event that any type of rate uniformly applicable to payment of such dutiable costs, charges, or expenses for merchandise of the class involved was a type of rate not certified in accordance with § 159.34 or § 159.35, the port director shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisal and liquidation as to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner.

**§ 159.37 Suspension of certification of rates.**

Whenever the Federal Reserve Bank of New York advises that its certification of rates for a currency is being suspended pending determination of the question whether it will certify multiple rates for that currency, the following procedures shall apply:

(a) *Notification of suspension.* Customs field officers will be informed when certification of a currency is being suspended. Currency information received from the Federal Reserve Bank, or otherwise available, which might be helpful in calculating estimated duties during the period of suspension will be furnished to the Customs field officers.

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(b) *Suspension of liquidation.* In any case where for the purposes of the assessment and collection of duties it is necessary to determine the proper rate or rates for a currency during the period when it has been suspended from certification, appraisement and liquidation shall be suspended until resumption of certification.

(c) *Resumption of certification.* When certification is resumed by the Federal Reserve Bank, the procedures in § 159.36 shall apply.

### § 159.38 Rates for estimated duties.

For purposes of calculating estimated duties, the port director shall use the rate or rates appearing to be applicable under the instructions in this subpart to the merchandise involved. When it is not yet known what certified rate or rates are applicable or no rate has been certified, the port director shall take into account all the information in his possession and shall use the highest rate or combination of rates (*i.e.*, the rate or combination of rates showing the highest amount of United States money), certified or uncertified as the case may be, which could be applicable.

## Subpart D—Special Duties

### § 159.41 Antidumping duties.

Antidumping duties will be assessed in accordance with part 351, chapter III of this title.

[T.D. 80-271, 45 FR 75641, Nov. 17, 1980, as amended by CBP Dec. 12-21, 77 FR 73309, Dec. 10, 2012]

### § 159.42 Discriminating duties.

The discriminating duties provided for in subsection 1 of paragraph J, section IV, Tariff Act of 1913, as amended by the Act of March 4, 1915 (19 U.S.C. 128, 131), and the discriminating duties and penalties provided for in section 338, Tariff Act of 1930 (19 U.S.C. 1338), shall be imposed only in pursuance of specific instructions from the Commissioner of Customs.

### § 159.43 Duties contingent upon foreign export duties, charges, or restrictions.

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U.S.C. 1202), provides for the imposition under certain conditions of additional duties on merchandise covered thereby. The assessment of these additional duties is dependent upon action by the President, and notice of such action, if taken, will be published in the Customs Bulletin.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 89-1, 53 FR 51270, Dec. 21, 1988; T.D. 97-82, 62 FR 51771, Oct. 3, 1997]

### § 159.44 Special duties on merchandise imported under agreements in restraint of trade.

Whenever it appears that imported articles may be subject to the special duties provided for in section 802, Act of September 8, 1916 (15 U.S.C. 73), the port director shall report the matter to the Commissioner of Customs and await instructions with respect to the imposition of such duties.

### § 159.45 Additional duty for unauthentic claims of antiquity.

When additional duty is imposed in accordance with § 10.53 of this chapter for an unauthentic claim of antiquity, such duty shall be assessed in addition to any other duty imposed on the merchandise by law.

### § 159.46 Marking duties.

(a) *Based on dutiable value.* The marking duty prescribed by section 304(f), Tariff Act of 1930, as amended (19 U.S.C. 1304(f)), shall be assessed upon the dutiable value as defined in section 503, Tariff Act of 1930, as amended (19 U.S.C. 1503).

(b) *Suspension of liquidation.* The liquidation of entries shall not be suspended merely because the merchandise covered thereby is not legally marked, but, upon special application by the importer, the liquidation may be deferred for a reasonable time to permit the marking, destruction, or exportation of the merchandise.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 90-51, 55 FR 28191, July 10, 1990]

**§ 159.47 Countervailing duties.**

Countervailing duties will be assessed in accordance with part 351, chapter III, of this title.

[T.D. 80-271, 45 FR 75641, Nov. 17, 1980, as amended by CBP Dec. 12-21, 77 FR 73309, Dec. 10, 2012]

### Subpart E—Suspension of Liquidation

**§ 159.51 General.**

Liquidation of entries shall be suspended only when provided by law or regulation, or when directed by the Commissioner of Customs. Liquidation of entries shall not be suspended simply because issues involved therein may be before the Customs Court in pending litigation, since the importer may seek relief by protesting the entries after liquidation.

**§ 159.52 Warehouse entry not liquidated until final withdrawal.**

Liquidation of a warehouse or re-warehouse entry shall be suspended until all merchandise covered by the entry has been accounted for within the bonded period by withdrawal, abandonment, or destruction, or until the bonded period has expired if the merchandise has not been so accounted for before that time.

**§ 159.53 Proof of duty-free or reduced-duty status.**

Various provisions in part 10 of this chapter provide for suspending liquidation of entries covering certain merchandise entered at a conditionally free or conditionally reduced rate of duty, pending production of required proof. Upon production of the required proof, or upon failure to produce the proof within the required time, the entries shall be liquidated accordingly.

**§ 159.54 Open bonds for production of documents.**

The liquidation of entries on which bonds are open for the production of documents affecting the rate of duty shall be suspended pending the performance or nonperformance under the bond, unless production of the document is waived in accordance with §141.92 of this chapter.

**§ 159.55 Possible prohibited food, drugs, or other articles.**

(a) *Suspension of liquidation.* The liquidation of each entry covering merchandise the subject of §12.1 of this chapter (which pertains to certain foods, drugs, cosmetics, economic poisons, hazardous substances, dangerous caustic or corrosive substances, and related items) shall be suspended until it is determined whether admission of the merchandise into the United States is permitted under the law.

(b) *Allowance for exportation or destruction.* In any case where the admission of such merchandise into the United States is refused and the merchandise is exported under Customs supervision in accordance with §158.45(b) of this chapter, or destroyed under Customs supervision in accordance with §158.41 of this chapter, the merchandise is exempt from duty and any duties collected thereon shall be refunded.

**§ 159.57 Merchandise affected by an American manufacturer's cause of action sustained by the court.**

Liquidation of entries for merchandise of the character covered by a decision of the Secretary of the Treasury published in accordance with §175.24 of this chapter, entered or withdrawn for consumption after the date of publication of a decision of the U.S. Court of International Trade sustaining in whole or in part the cause of action of an American manufacturer, producer, or wholesaler, shall be suspended until final disposition is made of the cause of action. Upon final disposition, such entries shall be liquidated, or, if necessary, reliquidated in accordance with the final judicial decision.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

**§ 159.58 Dumping and countervailing duties; action by port director.**

(a) *Antidumping matters.* Upon receipt of notification from the Commissioner, each port director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the "Notice of Preliminary Affirmative Antidumping Determination," "Notice of Final Affirmative

Antidumping Determination” or “Notice of Violation of Agreement” as provided by part 353, chapter III, of this title. Each port director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated antidumping duty.

(b) *Countervailing matters.* Upon receipt of notification from the Commissioner, each port director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the “Notice of Preliminary Affirmative Countervailing Duty Determination,” “Notice of Final Affirmative Countervailing Duty Determination” or “Notice of Violation of Agreement,” as provided by part 355, Chapter III, of this title. Each port director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated countervailing duty.

[T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

### Subpart F—Continued Dumping and Subsidy Offset

SOURCE: T.D. 01–68, 66 FR 48552, Sept. 21, 2001, unless otherwise noted.

#### § 159.61 General.

(a) *Continued dumping and subsidy offset.* Under section 754 of the Tariff Act of 1930, as amended by Public Law 106–387, 114 Stat. 1549 (19 U.S.C. 1675c), known as the Continued Dumping and Subsidy Offset Act of 2000, assessed duties received on or after October 1, 2000 under a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921, will be distributed, as provided under this subpart, to affected domestic producers for certain qualifying expenditures that these affected domestic producers incur after the issuance of such an antidumping duty order or finding, or countervailing duty order. This dis-

tribution is called the continued dumping and subsidy offset.

(b) *Affected domestic producer—(1) General rule.* Except as provided in paragraph (b)(2) of this section, an “affected domestic producer” under paragraph (a) of this section means any manufacturer, producer, farmer, rancher or worker representative (including any association of such persons) that remains in operation continuing to produce the product covered by the antidumping duty order or finding or countervailing duty order, and that was a petitioner or an interested party that supported a petition concerning an antidumping duty order, a finding under the Antidumping Act of 1921, or a countervailing duty order that was entered. It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the domestic producers potentially considered “affected domestic producers” eligible to receive a distribution in connection with each order or finding. In addition to the potential “affected domestic producers” set forth on the USITC list, the following parties also are potential “affected domestic producers”:

(i) *Successor company.* In the case of a company that has succeeded to the operations of a predecessor company that appeared on the USITC list, the successor company may file a certification to claim an offset as an affected domestic producer on behalf of the predecessor company. In its certification, the company must name the predecessor company to which it has succeeded and it must describe in detail the duly authorized succession by which it is entitled to file the certification.

(ii) *A member company of an association.* A member company of an association appearing on the USITC list for an order or finding may file a certification to claim an offset as an affected domestic producer, even though the member company does not itself appear on the USITC list, provided that the company also meets the other requirements of the statute. In its certification, the company must name the association of which it is a member and the company must specifically establish that it was a member of the association at the

time the association filed the petition with the USITC.

(2) *Exceptions.* A party who is named on the USITC list is not an “affected domestic producer” under the following circumstances:

(i) *Product no longer produced.* A company, business or person that has ceased production of the product covered by the antidumping duty order or finding, or countervailing duty order, *i.e.*, did not manufacture that product at all during the fiscal year that is the subject of the disbursement, is not an affected domestic producer under this section.

(ii) *Acquisition by related company—*  
(A) *Related company defined.* A company, business or person is not an affected domestic producer if that company, business, or person has been acquired by another company or business that is related to a company that opposed the antidumping or countervailing duty investigation that led to the order or finding. For purposes of this paragraph, a company, business or person is related to another company, business or person if:

(1) The company, business or person directly or indirectly controls or is controlled by the other company, business or person;

(2) A third party directly or indirectly controls both companies, businesses or persons; or

(3) Both companies, businesses or persons directly or indirectly control a third party and there is reason to believe that the relationship causes the first company, business or person to act differently than a nonrelated party.

(B) *Control of one party by another.* For purposes of paragraphs (b)(2)(ii)(A)(1) through (b)(2)(ii)(A)(3) of this section, one party would be considered to directly or indirectly control another party if the party was legally or operationally in a position to exercise restraint or direction over the other party.

(c) *Qualifying expenditures.* Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties must fall within the categories described in paragraphs (c)(1) through (c)(10) of this section. These expenditures must be incurred after the issuance, and prior to

the termination, of the antidumping duty order or finding or countervailing duty order under which the distribution is sought. Further, these expenditures must be related to the production of the same product that is the subject of the related order or finding, with the exception of expenses incurred by associations which must relate to a specific case.

- (1) Manufacturing facilities;
- (2) Equipment;
- (3) Research and development;
- (4) Personnel training;
- (5) Acquisition of technology;
- (6) Health care benefits for employees paid for by the employer;
- (7) Pension benefits for employees paid for by the employer;
- (8) Environmental equipment, training, or technology;
- (9) Acquisition of raw materials and other inputs; and
- (10) Working capital or other funds needed to maintain production.

#### § 159.62 Notice of distribution.

(a) *Publication of notice.* At least 90 days before the end of a fiscal year, Customs will publish in the FEDERAL REGISTER a notice of intention to distribute assessed duties received as the continued dumping and subsidy offset for that fiscal year. The notice will include the list of domestic producers, based upon the list supplied by the USITC (see § 159.61(b)(1)), that would be potentially eligible to receive the distribution.

(b) *Content of notice.* The notice of intention to distribute the offset will also contain the following:

(1) The case name and number of the particular order or finding concerned, together with the dollar amount contained in the special account for that order or finding as of June 1 of the subject fiscal year (see § 159.64(a)(1)); and

(2) The instructions for filing the certification under § 159.63 in order to claim a distribution.

#### § 159.63 Certifications.

(a) *Requirement and purpose for certification.* In order to obtain a distribution of the offset, each affected domestic producer must submit a certification,

in triplicate, or electronically as authorized by CBP, to the Assistant Commissioner, Office of Administration, Headquarters, or designee, that must be received within 60 days after the date of publication of the notice in the FEDERAL REGISTER, indicating that the affected domestic producer desires to receive a distribution. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding for which a distribution has not previously been made, and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

(b) *Content of certification.* While there is no established format for a certification, the certification must identify the date of the FEDERAL REGISTER notice under which it is submitted, and the case name and the number of the particular order or finding cited in the FEDERAL REGISTER notice. The certification must be executed and dated by a party legally authorized to bind the domestic producer. The certification must also state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed.

(1) *Identifying information for domestic producer.* The certification must include the following identifying information related to the domestic producer:

(i) The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);

(ii) The address of the domestic producer (if a post office box, the secondary street address must also be included);

(iii) The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;

(iv) The specific business organization of the domestic producer (corporation, partnership, sole proprietorship); and

(v) The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s).

(2) *Amount of claim.* In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the following:

(i) The total amount of qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category (see § 159.61(c)(1) through (c)(10));

(ii) The total amount of those expenditures which have been the subject of any prior distribution under section 754, Tariff Act of 1930, as amended (19 U.S.C. 1675c); and

(iii) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount currently and previously certified as noted in paragraph (b)(2)(i) of this section minus the total amount the subject of any prior distribution as noted in paragraph (b)(2)(ii) of this section).

(3) *Statement of eligibility to receive distribution.* The certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer (see § 159.61(b)(1) and (b)(2)).

(i) *Amount certified for payment.* The affected domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (see paragraphs (b)(2)(ii) and (b)(2)(iii) of this section).

(ii) *Same qualifying expenditures included on more than one certification.* Where the domestic producer is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures.

(iii) *Continued production of product covered by order or finding; acquisition by related company.* The statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought (see § 159.61(b)(2)(i)). In addition, the domestic producer must state whether it has been acquired by a company or business that is related to a company, within the meaning of § 159.61(b)(2)(ii)(A)(1) through (3), that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought.

(c) *Review and correction of certification.* A certification that is submitted in response to a notice of distribution and received within 60 days after the date of publication of the notice in the FEDERAL REGISTER may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for current and prior qualifying expenditures, including the amount claimed for distribution, appear to be correct (see paragraph (b)(2) of this section). A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer within 15 days after the close of the 60-day filing period. Within 10 days of the date that Customs returns a certification as being materially incorrect or incomplete, Customs must receive a corrected certification from the affected domestic producer. Customs will make every effort to assist companies to perfect their certifications and will not return claims for minor errors or omissions. However, it remains the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory as provided in this paragraph will result in the domestic producer not receiving a distribution.

(d) *Verification of certification; supporting records.* Certifications are subject to verification. Parties, therefore,

are required to maintain the accounting records used in developing their claims, for a period of five years after the filing of the certification. The records supporting certifications must be those that are normally kept in the ordinary course of business (see § 163.1(a)(1) and (a)(2)(vi) of this chapter). Parties must be able to demonstrate that their records specifically support each qualifying expenditure enumerated in a certification. In addition, the claimant must be able to support how qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

(e) *Disclosure of information in certifications; acceptance by producer.* The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public (see § 159.64(g)(1)). The submission of the certification will be construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

[T.D. 01-68, 66 FR 48552, Sept. 21, 2001, as amended by CBP Dec. 12-21, 77 FR 73309, Dec. 10, 2012]

#### § 159.64 Distribution of offset.

(a) *The creation of Special Accounts and Clearing Accounts—(1) Special Accounts.* As directed in the legislation (19 U.S.C. 1675c(e)), Customs will establish Special Accounts for each antidumping duty order or finding or countervailing duty order, into which funds will be transferred as set out in paragraph (b) of this section. All distributions to affected domestic producers will be made from the Special Accounts.

(2) *Clearing Accounts.* In order to properly manage and account for dumping and subsidy offsets, as well as any requisite refunds to importers, Customs will also establish Clearing Accounts. All estimated antidumping

and countervailing duties received pursuant to an antidumping or countervailing order or finding in effect on January 1, 1999, or thereafter, will be deposited into a Clearing Account.

(b) *Distribution of assessed duties received from the Special Accounts; refunds resulting from reliquidation or court action; and overpayments to affected domestic producers*—(1) *Distribution of assessed duties received from the Special Accounts.*

(i) No later than 60 days after the end of a fiscal year, Customs will distribute the assessed duties transferred from the Clearing Accounts and received into the Special Accounts. The amount distributed shall be referred to as the dumping and subsidy offset;

(ii) Transfers from the Clearing Accounts to the Special Accounts will be made by Customs throughout the fiscal year. Transfers will occur between a Clearing Account and a Special Fund Account when an entry upon which antidumping or countervailing duties are owed is properly liquidated pursuant to an order, finding or receipt of liquidation instructions;

(iii) The amount transferred at liquidation to the Special Account will be dependent upon the amount actually collected on the entry and in the Clearing Account. Following liquidation, additional transfers will be made on the liquidated entry to the corresponding Special Account, as additional antidumping or countervailing duties are collected.

(2) *Refunds resulting from reliquidation or court action.* If any of the underlying entries composing a prior distribution should reliquidate for a refund, such refund will be recovered from the corresponding Special Account. Similarly, refunds to importers resulting from any court action involving those entries will also be recovered from the corresponding Special Account. Refunds to importers will not be delayed pending the recovery of overpayments from domestic producers as set out in paragraph (b)(3) of this section.

(3) *Overpayments to affected domestic producers.* Overpayments to affected domestic producers resulting from subsequent reliquidations and/or court actions and determined by Customs to be not otherwise recoverable from the corresponding Special Account as set out

in paragraph (b)(2) of this section will be collected from the affected domestic producers. The amount of each affected domestic producer's bill will be directly proportional to the total dumping and subsidy offset amounts that the affected domestic producer previously received under the related Special Account. All available collection methods will be used by Customs to collect outstanding bills, including but not limited to, administrative offset. Interest at the same rate set out at §24.3a(c) of this chapter will begin to accrue on unpaid bills 30 days from the bill date.

(c) *Payment of certified claims.* (1) If the total amount of the certified net claims filed by affected domestic producers does not exceed the amount of the offset available for distribution in the corresponding Special Account, the certified net claim for each affected domestic producer will be paid in full.

(2) If the certified net claims exceed the dumping and subsidy offset amount available in the corresponding Special Account, such offset will be made on a pro rata basis based on each affected domestic producer's total certified claim.

(3) In any case where the distribution is not for the entire certified qualifying expenditure submitted by an affected domestic producer, and if the affected domestic producer believes that the reduction was the result of clerical error or mistake by Customs, it must file a request for reconsideration within 30 calendar days to the address given in the notification. After considering the matter, the Customs Service will notify the party requesting reconsideration of its decision. However, any adjustments will be made only from funds remaining in the account for that case in the current or future fiscal years, and will be paid prior to any future distributions.

(d) *Final distribution and termination of the Special Account.* (1) A Special Account will be terminated and a final distribution will occur when:

(i) The order or finding with respect to which the account was established has terminated; and

(ii) All entries relating to the order or finding are liquidated, all outstanding amounts collected or properly

accounted for by Customs, all related protests, petitions, and court actions fully concluded, and all refunds due to importers on the underlying entries are paid in full.

(2) Once the requirements set out in paragraph (d)(1) of this section have been met, notice of a final distribution will be issued pursuant to § 159.62.

(3) Amounts not timely claimed under the notice of final distribution will be permanently deposited into the General Fund of the Treasury.

(e) *Interest on Special Accounts and Clearing Accounts.* In accordance with Federal appropriations law, and Treasury guidelines on Special Accounts, funds in such accounts are not interest-bearing unless specified by Congress. Likewise, funds being held in Clearing Accounts are not interest-bearing unless specified by Congress. Therefore, no interest will accrue in these accounts. However, statutory interest charged on antidumping and countervailing duties at liquidation will be transferred to the Special Account, when collected from the importer.

(f) *Distribution final and conclusive.* Except as provided in paragraphs (b)(3) and (c)(3) of this section, any distribution made to an affected domestic producer under this section shall be final and conclusive on the affected domestic producer.

(g) *Annual report; disclosure of information.* Although it is not mandated in the law (19 U.S.C. 1675c), Customs will issue an annual report on the disbursements. This report will be available to the public via the Customs website. The annual report will address any initiatives that have been implemented to improve the liquidation and disbursement process. In addition, the annual report will include the information described in paragraphs (g)(1) and (g)(2) of this section.

(1) *Company-specific information.* The annual report will include the following information concerning those parties that have submitted certifications for a distribution of the offset with respect to each order or finding as identified by its case number:

- (i) The name of the claimant;
- (ii) The total dollar amount claimed by that party on its certification; and

(iii) The total dollar amount disbursed to that company by Customs.

(2) *General information.* The annual report will include the following general information for each order or finding as identified by its case number:

- (i) The number of entries and dollar amounts in the clearing account at the beginning of each fiscal year;
- (ii) The number and amount of Customs re-liquidations during the fiscal year; and
- (iii) The dollar amounts remaining uncollected from Customs bills issued during the fiscal year.

## PART 161—GENERAL ENFORCEMENT PROVISIONS

Sec.  
161.0 Scope.

### Subpart A—General Provisions

161.2 Enforcement for other agencies.  
161.5 Compromise of Government claims.

### Subpart B—Compensation of Informant

161.12 Eligibility for compensation.  
161.14 Advising informant of entitlement.  
161.15 Confidentiality for informant.  
161.16 Filing of claim for informant compensation.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1600, 1619, 1624.

Section 161.2 also issued under 12 U.S.C. 95a; 18 U.S.C. 545; 19 U.S.C. 1595(a); 22 U.S.C. 401, 1934, 2349aa8-9; 42 U.S.C. 1804, 1807; 50 U.S.C. 1641 *et seq.*, 1701 *et seq.*; 50 U.S.C. App. 1-44, 2411.

SOURCE: T.D. 72-211, 37 FR 16487, Aug. 15, 1972, unless otherwise noted.

### § 161.0 Scope.

This part provides general information concerning Customs enforcement of certain import and export laws administered by other federal agencies, the filing of offers in compromise of government claims, the eligibility of individuals for informant compensation, and the filing of claims for informant compensation.

[T.D. 98-22, 63 FR 11826, Mar. 11, 1998]