

Demands for Redelivery of Imported Goods and Liquidated Damages

United States Customs has the power to order the recall or "redelivery" of imported articles long after the articles have been released by them.

The Customs Service must determine the admissibility of articles imported into the United States before they are released. However, Customs does not have the human resources needed to timely examine all cargo prior to entry/release. Customs therefore, "*conditionally*" releases merchandise prior to a determination that all legal requirements have been met.

If Customs subsequently determines that the goods are not admissible into the United States, it will order the redelivery of the merchandise to the Customs offices or a designated terminal. Failure to timely redeliver all of the merchandise will result in the assessment of monetary penalty (liquidated damages). Liquidated damages are a type of monetary penalty assessed by Customs because of a failure by an importer or its Customs broker to satisfy one or more conditions of importation, including the redelivery of merchandise. The amount of liquidated damages will vary from an amount equal to the entire value of the shipment to an amount that is triple the value of the shipment.

Rules and Limitations On Customs To Demand Redelivery

19 CFR 141.113(g) of the Customs Regulations provides that a demand for the return of merchandise to Customs' custody shall not be made after the liquidation of the entry has become final. By law, liquidation can take up to one year, and can, under certain circumstances, be extended for another three years. There is a limit, however, on the amount of time Customs has to demand redelivery of merchandise. This limitation is found in Section 113.62(d) of the Customs Regulations, which reads:

"a demand for the redelivery of merchandise can be made no later than 30 days following the date the merchandise is released from Customs Custody, or 30 days after the end of the conditional release period, whichever is later."

Conditional release periods

If a request for information is issued (CF28) within 30 days of release. The conditional release period ends 50 days after the issuance of the CF28

- Section 113.62 has been interpreted to preclude Customs from enforcing a demand for redelivery that is issued more than 30 days after the date merchandise is physically released, unless a "conditional release period" is established.

Customs explained in C.S.D. 90-99 that a conditional release period is the period of time an importer is given to respond to a formal request for information or production of a sample (for example, a CF 28). By regulation, a CF 28 must be issued within 30 days of the actual

release of the merchandise. Once a CF 28 is issued, an importer is provided 20 days to submit the sample. If Customs does not received the sample, or if it is found that the sample is non-compliant, Customs has 30 days from the date of receipt of the sample to issue the demand for redelivery of the merchandise. If no sample is provided, Customs must issue the demand for redelivery within 30 days of the last day to provide the sample.

The conditional release period is not the same in all instances. For that class of goods known as "restricted merchandise," [\[1\]](#) the conditional release period may be longer. For textile and textile products, the conditional release period ends 180 days from the date of release. (See 19 C.F.R. 141.113(b).) In the case of FDA-regulated products, it can be even longer. In HQ 225807, dated December 4, 1995, Customs said that the absence of a "may proceed notice" issued by the FDA prior to the release of the merchandise by Customs was an occurrence establishing a conditional release period, and that the FDA's subsequent issuance of a Notice of Refusal of Admission established the end of the conditional release. Customs then has 30 days from the end of the conditional release period to issue the notice of redelivery. Of course, the failure to redeliver the restricted merchandise will result in the issuance of a demand for liquidated damages equal to three times the value of the restricted goods.

What Can You Do If You Receive A Notice Of Redelivery?

Alert importers will not be surprised to receive a notice of redelivery. Typically, a CF 28 Request for Information or Production of Sample will precede the Demand for Redelivery. Ignoring the CF 28 or not taking the opportunity to submit a serious response to the request will inevitably lead to the issuance of a demand of redelivery and possibly, a demand for payment of liquidated damages