

SIMON GLUCK & KANE LLP
CUSTOMS & INTERNATIONAL TRADE LAW
ONE PENN PLAZA
250 WEST 34TH STREET
SUITE 4615
NEW YORK, N. Y. 10119

TEL: 212-775-0055
FAX: 212-839-9103

E-MAIL: ckane@customs-law.com
INTERNET: www.customs-law.com

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CBP "Love Letters": Do as DEMANDED?

What do you do as an importer when you get one of those DEMAND letters from CBP? The entire form NOTICE OF PENALTY OR LIQUIDATED DAMAGES INCURRED AND DEMAND FOR PAYMENT is in CAPITAL LETTERS.

Penalty: claim by U.S. Customs (CBP) for payment in satisfaction of a statutory amount imposed for a violation of a law.

Liquidated Damages: claim by CBP for a violation of a bond term such as the timely payment of duties, filing of an entry summary, importer security filing, submission of a manifest.

By now, everyone knows that capital letters mean that the source is SHOUTING. The only people who might enjoy shouting are deaf umpires. For the rest of us, it is unnerving, to say the least.

There is no "Dear Sir or Madam." The first line of the body of the form letter reads: DEMAND IS HEREBY MADE FOR PAYMENT OF (dollar amount) and goes on to yell about what you/your company did. If the amount is manageable, I suspect many importers will just pay the demand amount to make it go away, treating it something like a deficiency notice from the IRS. ("If I pay this, they'll leave me alone--I hope!")

In the hysteria of the moment the importer may not realize that in most instances a petition can be filed to mitigate the demand. The importer may also be unaware that the demand for liquidated damages may be IN ADDITION to a penalty--they are not mutually exclusive. If you pay one, you may have harmed your ability to defend against the other.

As for mitigation, if you don't ask for it, you won't get it. If you don't petition within the time allowed, the maximum mitigation may not be allowed, even if good arguments would support the importer's cause.

And don't look for the import bond as insurance--if CBP makes a demand on the surety for liquidated damages, and the surety pays, the importer is liable to the surety to reimburse the surety.

Note that the surety will be put on notice by CBP even though the importer has filed a petition. When that happens, the surety will ask for a copy of the petition to protect its own interests.

You wouldn't know how to file a petition or what "magic words" to use? Hey! That's what I do! (Among other things).

SIMON GLUCK & KANE LLP

A handwritten signature in black ink, appearing to read "Christopher M. Kane". The signature is written in a cursive style with a large, stylized initial 'C'.

Christopher M. Kane