



Global Trends and Customs:

U.S. Customs Cracks Down on “Gate Outs”

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U.S. Customs and Border Protection (Customs) is now requiring marine terminal operators to secure a bond against “gate out” violations. “Gate out” violations occur when cargo selected by Customs for inspection is offloaded from arriving vessels to marine terminals, and then delivered directly from the marine terminals, thereby avoiding Customs inspection entirely. Customs is now requiring all terminal operators and carriers to post bonds because of repeated “gate out” violations. The bond will guarantee payment of penalties incurred for “gate out” violations. Marine terminal operators have until January 20, 2007 to comply with this new bond requirement.

Customs has the authority to issue civil monetary penalties for “gate out” violations pursuant to 19 U.S.C. 1595a(b). The penalty amount for such a violation is equal to the domestic value of the merchandise, and Customs has the authority to assess penalties against any party who is deemed to be responsible for the unauthorized removal or delivery.

Experienced customs and international trade attorneys may assist with mitigating penalties and in some cases even may get Customs to cancel penalties entirely. Mitigating factors that Customs considers include inexperience, general good performance, low error rate in the handling of cargo, and remedial action taken to prevent future violations.

Marine terminal operators affected are those who engage in commerce with containers and cargo arriving from foreign destinations, either public or private. The only exception is for those who exclusively deal with bulk cargo.

The new regulation requires marine terminal operators to have either an International Carrier Bond or a Marine Terminal Operator Bond filed at the port where the affected terminal is located. The amount of the bond must be at least \$100,000, but is at the discretion of the local Customs Port Director. If a marine terminal operator already holds an International Carrier Bond, the bond amount must be at least \$100,000. The minimum amount can be raised to \$250,000 if it is deemed necessary by the local Port Director, specifically for marine terminal operators who have already incurred violations for allowing cargo to exit the terminal bypassing Customs authorization. The \$250,000 limit may only be set based on terminal operators past performance, with approval of the Office of Field Operations in Customs Headquarters.

If marine terminal operators work out of more than one port, the International Carrier Bond or a Marine Terminal Operator Bond must be filed at each port where the operator has a facility. Separate bonds for each facility are not required.

Marine Terminal Operators without a bond by January 20, 2007 will not be permitted to handle international container shipments. The only exception is for Marine Terminal Operators owned by foreign corporations, and documentation from a surety that the foreign corporation has applied for the bond must be provided to the Port Director. ■

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