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International Trade, Customs & Export Law

CBP Inquiries  
Effective Strategies to Survive and Thrive  
ATCC February 6, 2026

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# Overview

- Reasons to Care (Reasonable Care?)
- Pre Liquidation – 28s & 29s
- Rulings & Decisions
- Enforcement Proceedings
- Detentions & Seizures
- Case Studies



# I. “Reasons to Care” (Reasonable Care?)



# Reasonable Care – Relevant?

## The Customs Modernization Act

The "Mod Act" has led to significant changes in the manner in which the import community interacts with U.S. Customs. Two of the most significant changes which directly relate to Customs' selective enforcement approach are:

- Importers Exercise Reasonable Care Over The Import Process
- Importers Develop New Ways To Maintain Records
- Customs Provides Informed Compliance Before Enforcement
- Customs and Importers Treat Compliance as a Shared Responsibility



## How Do We Demonstrate "Reasonable Care?"

- Customs itself did not have, nor did it want to give, the answer to that question.
- Eventually issued a "Reasonable Care Checklist" as an informal means to evaluate exercise of reasonable care.
- Checklists pertain to classification, valuation, origin/marketing/quota, intellectual property, and miscellaneous.



## Congress Explains Reasonable Care and Shared Responsibility

"In meeting the 'reasonable care' standard, the Committee believes that an importer should consider:

1. pre-importation or formal rulings from Customs;
2. consulting with a Customs broker, a Customs consultant, or a public accountant or an attorney;
3. in-house employees such as counsel, a Customs administrator, or a corporate controller, with experience and knowledge of customs laws, regulations, and procedures; and
4. when appropriate, analyses from accredited labs and gaugers for determining technical qualities of an imported product."



## What Does Reasonable Care Mean?

1. Following the Customs Regulations
2. Knowing the Terms of Transactions
3. Knowing the Description, Use, Composition and Origin of Merchandise
4. Entering Merchandise Correctly
5. Providing Experts (either In-House or External or even Customs) with Material Facts and Circumstances
6. Establishing On-Going Procedures and Policies to Maintain Compliance and Detect/Report Violations



## Reasons to Care?

- **Establish credibility**
- **Achieve confidence, reassurance**
- **Avoid cumbersome, time-consuming proceedings**
- **Stave off audit, investigation**
- **Garner duty savings opportunities**

# Classifying Merchandise

- General Rules of Interpretation
- Terms of Headings & Legal Notes of the HTSUSA
- Relative Section Or Chapter Notes
- Explanatory Notes to the Harmonized Commodity Description and Coding System (ENs)
- U.S. Customs Administrative & Judicial Rulings
- U.S. Customs Uniform and Established Practices
- As imported; at the time of importation
- Trade Remedies – *Need I mention them??*

Key: Appropriate merchandise description and invoice



## Invoice Contents

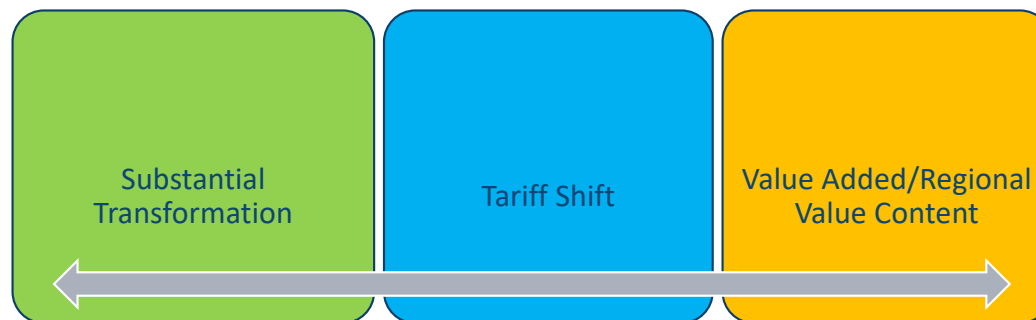
- Country of Origin
- Purchase price
- Kind of currency
- Rebates, drawbacks, bounties
- Goods/services furnished, but not in price
- Time, place, person relating to sale
- Detailed merchandise description
- Quantities in weights and measures
- Value if not shipped pursuant to purchase agreement
- All charges itemized by name and amount (e.g., freight, insurance, commission, cases, containers, coverings, packing, charges to bring goods to exporting carrier)

# Value

- Method of appraisement – proof of payment, terms of sale
- Relationship between parties
- Total payments, indirect payments, rebates for merchandise
- Additional amounts – assists, commissions, packing, royalties, proceeds
- Actual freight and shipping charges
- Alternative methods of appraisement (no sale, consigned goods, etc.)

# Duty Preference / Trade Programs / Origin

1. Substantial Transformation for basic Origin & Marking
2. 35% Regional Value Content Added Rule (RVC) for duty-free treatment (pre-NAFTA negotiated preferential programs)
3. Tariff Shift and Tariff Shift plus RVC for duty-free treatment (Modern Preferential Trade Agreements)



# You Make the Call! Number 1



Which one is true about the application of the Customs Modernization Act:

- A. It means that Customs does not issue inquiries to importers who are considered compliant.
- B. It legally mandates Customs to provide informed compliance before enforcement.
- C. It pertains to issues including, but not limited to, classification, value, trade preference, and origin.
- D. It required Customs to issue specific regulations to follow implementing reasonable care.

## II. “The Tip of the Iceberg” (Pre-Liquidation 28s & 29s)



## Pre-Liquidation Communications with CBP

- ▶ May involve nothing more than a telephone call or email
- ▶ More likely method is via formal written notification.
- ▶ Primary CBP tools are Request for Information (CBP Form 28) and the Notice of Action (CBP Form 29).
- ▶ *Often routine, as CBP personnel may lack industry knowledge to make a decision as to whether or not the merchandise has been properly classified or appraised. Or so you think....*

## Handling CBPF 28s/29s

- ▶ Both CBPF 28s and 29s provide extremely limited time periods to respond.
- ▶ Essential to forward requests immediately to the designated individual within the company.
- ▶ The failure to respond could cause CBP to reach conclusions disadvantageous to the company.

## General Info/Instructions – CBPF 28

- ▶ Necessary for proper classification and/or appraisement of merchandise and/or for ensuring import compliance.
- ▶ Reply is required in accordance with the law.
- ▶ All information, documents, and samples requested must relate to shipment of merchandise described on the form.
- ▶ Answer all indicated questions to the best of your knowledge.

## General Info/Instructions – CBPF 28 (Cont'd)

- ▶ All information treated as confidential.
- ▶ Reply required 30 days from date of request.
- ▶ If you wish to discuss any of the designated questions, contact CBP officer on form.
- ▶ Return a copy of the CBPF 28 with reply.

# Request For Information

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection REQUEST FOR INFORMATION 19 CFR 151.11		OMB CONTROL NUMBER: 1561-0023 EXPIRATION DATE: 8/31/2025	
Date of Request		Date of Entry and Importation	
Manufacturer/Seller/Shipper		Carrier	Entry No.
Invoice Description of Merchandise		Invoice No.	HTSUS Item No.
Country of Origin/Exportation	CBP Broker Company Name	Broker Filer Code/Number	
TO: Name: Last Name First Name M.I. Street 1: Street 2: City: State: Zip Code:		FROM: Street 1: Street 2: City: State: Zip Code:	
<p><b>Production of Documents and/or Information Required by Law:</b> If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.</p>		Port	Date Information Furnished
General Information and Instructions			
Please Answer Indicated Question(s)		Please Furnish Indicated Item(s)	
<input type="checkbox"/> A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise.  <input type="checkbox"/> B. Identify and give details of any additional costs/expenses incurred in this transaction, such as: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) packing</li> <li><input type="checkbox"/> (2) commissions</li> <li><input type="checkbox"/> (3) proceeds that accrue to the seller</li> <li><input type="checkbox"/> (4) assists</li> <li><input type="checkbox"/> (5) royalties and/or license fees</li> </ul>		<input type="checkbox"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto.  <input type="checkbox"/> B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates.  <input type="checkbox"/> C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article.  <input type="checkbox"/> D. Submit samples: <ul style="list-style-type: none"> <li>Article number and description _____</li> <li>from container _____</li> <li>mark(s) and number _____</li> </ul> Samples consumed in analysis, and other samples whose return is not specifically requested, will not normally be returned.  <input type="checkbox"/> E. See item below.	
CBP Officer Message			
Reply Message (If more space is needed, see continuation on page 2.)			
CERTIFICATION It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)			
I hereby certify that the information furnished herewith or upon this form in response to this inquiry is true and correct, and that any samples provided were taken from the shipment covered by this entry.		Name and Title/Position of Signer (Owner, Importer, or Corporate/Company Official) Last Name First Name M.I.	
Signature Telephone No.		Date	
CBP Official		Team Designation	
Fax No.		Telephone No.	
Email			



## CBP Request for Information – CBPF 28

- Requests for samples of imported merchandise;
- Requests for descriptive/informational literature;
- Bills of material/other production-related information;
- Explanation of relationship between the importer/exporter;
- Existence/inclusion of packing costs, commissions, assists, royalties/license fees and proceeds of resale;
- Copies of contracts/license agreements relating to the imported merchandise; and
- Documents supporting origin/preference.

## Best Practices – CBPF 28

- Review document, gather data requested, and prepare response.
- As necessary, contact customs broker or consultant/counsel for assistance in preparing and/or reviewing documentation.
- If unable to submit the response timely, contact assigned CBP IS in advance of due date and advise date response will be available.
- Request extension of time to respond in writing.

## Best Practices – CBPF 28 (Cont'd)

- Forward CBPF 28, visual samples, documents, written response, and any other responsive information to CBP.
- Save all correspondence and CBPF 28, including attachments and proof of receipt by CBP, for compliance with CBP recordkeeping requirements.
- Notify broker that company has responded to CBPF 28 by providing copies of the response or by separate communication.

## CBP Notice of Action – CBPF 29

- Customs has reviewed the information declared at entry (or in response to a CBPF 28) and is proposing a change or has already taken such action to that effect.
- Can involve a revision to the tariff classification or value declared at entry, a denial of preference program benefits, or a challenge to the country of origin reflected on the entry documents.
- Usually involves an increase in the duties/fees due and owing CBP.



**MAY BE ISSUED  
WITHOUT A  
CBPF 28!**

# General Info/Instructions – CBPF

## 29

- Demands careful attention due to possible increase in duties on this and possibly other entries.
- If company agrees with change, necessary to consider internal review for other errors.
- If company disagrees with change, immediate action is required.
- Customs broker should also receive copy.
- If action is only “proposed” importer has twenty days to respond.

# Notice of Action

DEPARTMENT OF HOMELAND SECURITY CUSTOMS AND BORDER PROTECTION			<b>NOTICE OF ACTION</b> <i>This is NOT a Notice of Liquidation</i>		1. DATE OF THIS NOTICE
<small>19 CFR 152.2</small>					
2. CARRIER	3. DATE OF IMPORTATION	4. DATE OF ENTRY		5. ENTRY NO.	
6. MFR/SELLER/SHIPPER	7. COUNTRY	8. CUSTOMS BROKER AND FILE NO.			
9. DESCRIPTION OF MERCHANDISE					
10. TO			11. FROM		
<p>12. THE FOLLOWING ACTION, WHICH WILL RESULT IN AN INCREASE IN DUTIES, —</p> <p><input type="checkbox"/> IS <b>PROPOSED</b> IF YOU DISAGREE WITH THIS PROPOSED ACTION, PLEASE FURNISH YOUR REASONS IN WRITING TO THIS OFFICE WITHIN 20 DAYS FROM THE DATE OF THIS NOTICE. AFTER 20 DAYS THE ENTRY WILL BE LIQUIDATED AS PROPOSED.</p> <p><input type="checkbox"/> HAS BEEN <b>TAKEN</b> THE ENTRY IS IN THE LIQUIDATION PROCESS AND IS NOT AVAILABLE FOR REVIEW IN THIS OFFICE.</p>					
<p>TYPE OF ACTION</p> <p>A. <input type="checkbox"/> RATE ADVANCE</p> <p>B. <input type="checkbox"/> VALUE ADVANCE</p> <p>C. <input type="checkbox"/> EXCESS    <input type="checkbox"/> WEIGHT    <input type="checkbox"/> QUANTITY</p> <p>D. <input type="checkbox"/> OTHER (<i>See below</i>)</p>					
13. EXPLANATION (Refer to Action letter designations above)					
14. CUSTOMS OFFICER (Print or Type)			15. TEAM DESIGNATION		16. TELEPHONE

CBP FORM 29



## Procedure – CBPF 29

- Customs broker should be instructed to promptly forward CBPF 29 to company representative.
- Company representative must carefully review document.
  - If action “proposed” – 20 days from date of notice to respond
  - If action “taken” – protest must be filed after liquidation

## Procedure – CBPF 29 Action Proposed

- If “proposed”, and company representative agrees with action, then correct information should be forwarded to all concerned personnel.
- Also, contact customs brokers and advise of correct information so that they may update their system/ records accordingly.
- All future imports of same item must be entered correctly and consistently.
- If company disagrees with action, prepare appropriate response detailing position and forward to broker/ consultant/ counsel for review prior to submitting to Customs

**CONSIDER  
DISCLOSURE!**



## Procedure – CBF 29 Action Taken

- If company disagrees with action, notify broker/ consultant/ counsel of intention to protest entry when it liquidates.
- Provide broker/ consultant / counsel with all necessary information to document position on the issue.
- Notifying broker/ consultant / counsel does not relieve company from monitoring liquidation of entry and to file timely protest.

## Procedure – CBPF 28/29 Investigation

- If company receives CF 28 or 29 indicating that CBP is “investigating” its transactions, immediately advise appropriate management along with copy of the notice.
- The company representative, management and outside customs consultant/counsel should discuss and address whether CBP is alleging whether a violation occurred.
- All available options must be considered.

**CONSIDER  
DISCLOSURE!**



## You Make the Call! Number 2

The CBPF 28 Request for Information or CBPF 29 Notice of Action:

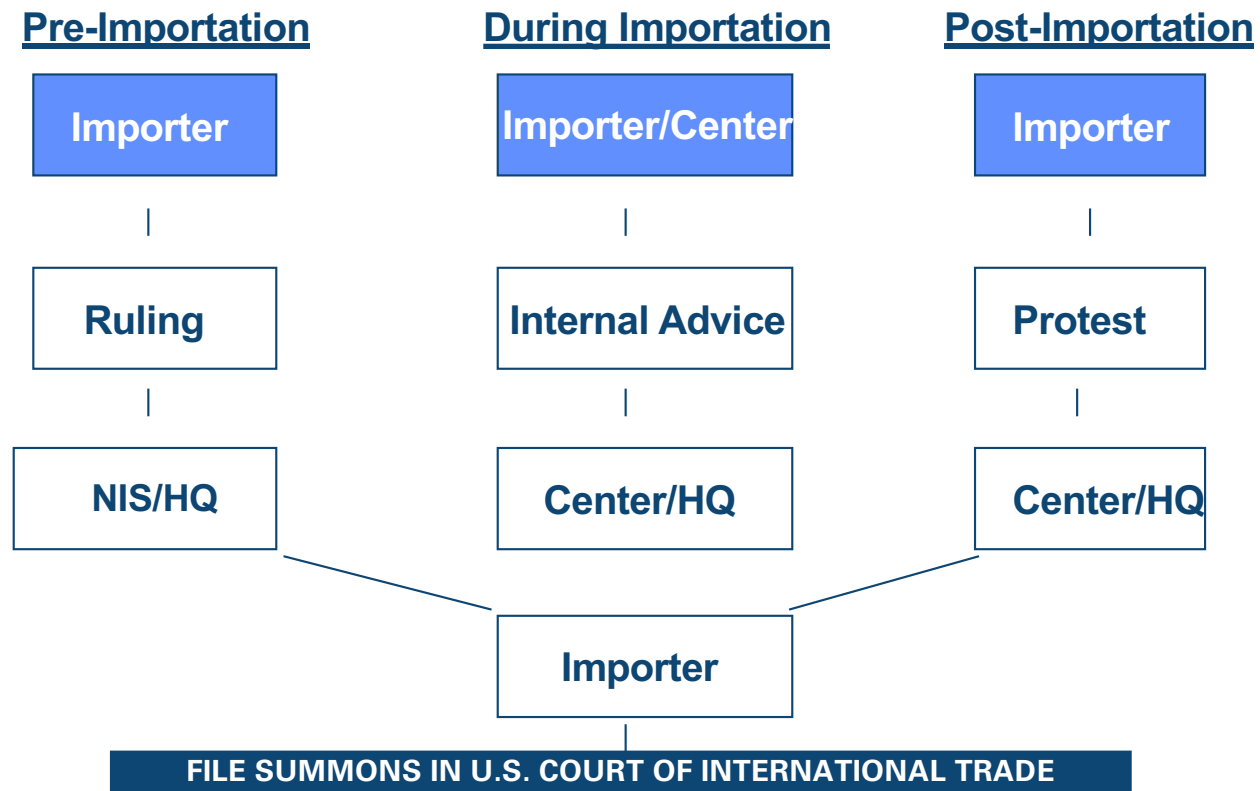


- A. Often is a routine way for CBP officials to obtain information to confirm classification or appraisalment.
- B. May be deemed invalid if CBP never issued a CBPF 28 before a CBPF 29.
- C. Must always be answered within the specified time frame because no extensions are permitted.
- D. Need not be followed in future transactions involving the same merchandise and/or issues.

### III. “The Tip of the Spear” (Rulings & Decisions)



# Proactive Inquiries



## Post Summary Corrections – For What?

- Importers may correct entry summaries prior to liquidation through Post Summary Corrections (PSCs).
- Covers issues such as –
  - Classification,
  - Overages/shortages,
  - Value (invoice revisions, price adjustments, currency exchange, assists, etc.)
  - Subsequent entry adjustments
  - Trade preference programs
  - Clerical errors

# Post Summary Corrections - Criteria

- Entry summary must be in accepted status.
- Entry summary cannot be under CBP review.
- Entry summary must be in CBP control.
- Entry summary must be paid for the PSC to be successfully submitted.
- If entry summary is on a Periodic Monthly Statement (PMS), entry must be “truly” paid in order for the PSC to be accepted. It may be up to 45 days following the entry date before CBP receives payment for the statement.
- Entry summary cannot be liquidated. If it’s liquidated the filers options to correct the entry summary is to file a prior disclosure or a protest.
- PSC filers can submit these changes within 300 days from the date of entry and up to 15 days of the scheduled liquidation date, whichever date is earlier. If PSCs are filed outside the specified timeframes, ACE will automatically reject it.
- **Only permissible changes to “entry types” via PSC are 01 to 03 and 03 to 01. Not 02 Quota/Visa!**

## Filing Timeframe Exceptions:

- Filer may also submit a PSC outside of the 300 day timeframe where the importer requests a liquidation extension.
- Filer may submit a PSC outside of the 300 day timeframe, when the subject entries are: entry type 03 or 07 or 06 with a case number; are in suspended status; and have an associated suspension basis of CVD Suspend, ADD Suspend, AD/CVD Suspend, Subject to EAPA, or Subject to Court Injunction.



# Post Summary Corrections – No No's!

Data that cannot be changed for all entry types:

- Importer of Record (The importer or broker must submit a CBP Form 3347 [Declaration of Owner], CBP will make the appropriate changes in ACE, and then the entry summary will be put back into the 314-day liquidation cycle. Once completed, the filer may transmit a PSC to correct the necessary entry summary data.)
- Consolidated summary indicator
- Port of Entry
- Cargo release certification request indicator (including DOT grouping, FDA grouping and PGA Grouping)
- Live entry indicator
- Trade Agreement (19 U.S.C 1520(d)) indicator for specific special programs, i.e. USMCA, NAFTA, CAFTA, DR, Chile, Columbia, Korea, Oman, Panama and Peru
- Reconciliation issue code
- Preliminary statement print date
- Periodic Monthly Statement (PMS)
- Statement client branch identifier
- Location of goods code
- Date of Entry



## Liquidation (Review)

- Definition: Final computation or ascertainment of duties.
- Time Period: 314 calendar days + protest period of 180 calendar days
- Time Extension: CBP may extend 1 year if it needs more information or importer shows good cause. Total extensions may not exceed 3 years.
- Deemed liquidated: If entry not liquidated within 1 year from entry/final withdrawal.

## Liquidation - Procedure

- Company representative shall review CF 4333-A to ensure that all entries liquidated “no change.”
- Any discrepancies must be reviewed with customs broker
- If entry needs to be protested, company must work with broker or consultant/ counsel to ensure protest timely filed.
- Track/maintain liquidation notices.
- Company works with broker to monitor liquidation status of entries filed.
- Any entries that haven't liquidated within 314 days must be reviewed with broker.
- If company received CBPF 28 or CBPF 29 must determine whether liquidation was consistent.

## Protests – 19 U.S.C. 1514

- Used primarily to take issue with CBP decisions with which an importer disagrees
- Normally utilized to provide evidence leading to duty refunds and other erroneously paid charges
- Cannot be submitted before liquidation, but can be amended prior
- Must be submitted within 180 calendar days after liquidation or reliquidation

## Protests (Cont'd)

Areas subject to protest -

- Appraised Value of the Merchandise
- Classification and Rate and Amount of Duties
- All Charges or Exactions of Whatever Character
- Exclusion of Merchandise from Entry or Delivery
- Liquidation or Reliquidation of an Entry
- Refusal to Pay a Claim for Drawback
- Clerical Error, Mistake of Fact or Inadvertence

# Application for Further Review

File along with protest demonstrating:

- Inconsistent with rulings or decision at any port regarding same or similar merchandise;
- Involves questions of law or fact which have not been ruled upon;
- Involves matters previously ruled upon but facts or legal arguments were not considered at time of original ruling; or
- Involves questions which HQ refused to consider as an internal advice.

## Petitions – 19 U.S.C. 1515

- Request to set aside denial of further review
  - Erroneously, improperly denied or denied without authorization
  - File within 60 days of denial notice
  - HQ must act within 60 days from date of request
- Request to void denial of protest
  - Protest denied contrary to proper instructions
  - CBP can void on own initiative or pursuant to written request filed within 90 days of protest denial

## You Make the Call! Number 3



Which of the following is false:

- A. Prior to liquidation, PSCs allow importers to request refunds or submit additional duties and change between entry types 01 and 03.
- B. An importer should inquire with its broker about entries that are still open over 314 days from filing.
- C. An importer can request further review of a protest once it receives a notice of that protest's denial.
- D. Even if local CBP denies your protest and/or request for further review, an importer can file a petition alleging CBP's erroneous or improper denial.

## IV. “The Tipping Point” (Enforcement Proceedings)



# Commercial Penalties

## 19 USC 1592

A commercial negligence or fraud claim under 19 U.S.C. 1592 may be brought against a party that enters, introduces or attempts to enter or introduce merchandise, if Customs establishes the following elements:

- False document/information, statement, act or omission.
- Materiality.
- Fraud, gross negligence or negligence.



## Prior Disclosure

- Limits exposure to civil penalties under Section 1592.
- Include all pertinent facts, with a tender of the duties owed.
- Submit in writing, before, or without knowledge of, the commencement of a formal investigation into the matter being disclosed.
- **Negligence:** ½ to 2 Times Loss Becomes Interest (None if Pre-Liquidation)
- **Gross Negligence:** 2 ½ to 4 Times Loss Becomes Interest (None if Pre-Liquidation)
- **Fraud:** 5 to 8 Times Loss Becomes 1 Times Loss



## Elements of Prior Disclosure

- Disclose Circumstances of Violation
- Before or without Knowledge of Commencement of Investigation
- Tender Actual Loss of Duties



## Commencement of Investigation

- Date recorded in writing by Customs
- Facts and circumstances discovered or information received
- Caused Customs to believe possible violation existed

## Presumed Knowledge of Commencement

- Customs officer informs of violation
- Agent inquires about violation
- Agent requests related books/records
- Pre-penalty/penalty notice
- Subject merchandise seized



# CBP Inquiries & Investigations

- 19 CFR 151.11.
  - Port Director requires samples or packages of merchandise.
  - Have been released from CBP custody.
  - Send importer written request on a CF 28, or other appropriate form.

# CBP Inquiries & Investigations

- 19 CFR 152.2.
  - Port Director believes that the entered rate or value of any merchandise is too low, or finds that the quantity imported exceeds the entered quantity.
  - Estimated aggregate increase in duties on that entry exceeds \$15.
  - Promptly notify the importer on a CF 29 specifying the nature of the difference on the notice.
  - Liquidation shall be made promptly and not withheld for a period of more than 20 days from the date of mailing such notice unless there are compelling reasons.

# CBP Inquiries & Investigations

House Report “HR Rep. No. 361 to NAFTA” regarding prior disclosures

- Clearly defined and objective standard to measure when a formal investigation has commenced.
- Create a formal document or electronic transmission that will serve as evidence, if so required, of the formal opening of an investigation.
- If a CBP official has reasonable cause to believe that a violation of 19 USC 1592 has occurred, they must record the salient facts and provide them to the Office of Enforcement or other central unit. That office will determine whether the facts merit the opening of a formal investigation.

# CBP Inquiries & Investigations

- Must record the essential facts (e.g., names, nature of investigation, type of issue such as undervaluation, marking date and time the case is opened).
- This will allay the trade community's concerns that prior disclosure benefits will be denied without tangible evidence.
- If CBP determines that it is appropriate to issue a pre-penalty notice, a copy of the written document or electronic transmission should be included as an exhibit.
- If CBP already opened a formal investigation, the disclosing party must demonstrate that it disclosed without knowledge of the commencement of a formal investigation.

# Letter of Investigation

[REDACTED]



U.S. Customs and  
Border Protection

[REDACTED] 2025

[REDACTED] President  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

This is to advise you that U.S. Customs and Border Protection (CBP) has reason to believe that [REDACTED] has violated 19 U.S.C. § 1592. CBP has initiated an investigation into all entries filed by, or on behalf of [REDACTED] for violations of 19 U.S.C. § 1592 including, but not limited to, the incorrect application of the United States-Korea Free Trade Agreement.

Representatives from CBP or Homeland Security Investigations (HSI) may contact your company or a representative at a later date. If you have any questions concerning this matter, please contact Import Specialist [REDACTED]

Sincerely,

[REDACTED]  
[REDACTED]

Assistant Center Director [REDACTED]  
U.S. Customs and Border Protection  
[REDACTED]

Cc: Assistant Center Director, Enforcement Division, [REDACTED]  
Assistant Center Director, Validation and Compliance, [REDACTED]  
Supervisory Import Specialist, Enforcement Division, [REDACTED]  
Supervisory Import Specialist, Validation and Compliance, [REDACTED]  
Import Specialist, Validation and Compliance, [REDACTED]



# CBP Inquiries & Investigations

Prior Disclosure Regulations 63 FR 29126 – May 28, 1998

**Comment:** A CBPF 28 or CBPF 29 should not be considered written evidence of a “commencement of a formal investigation.”

**CBP:** It is not appropriate to dictate the form of the commencement writing. We agree that the CBPF 28 or 29 which merely requests information or proposes rate or value advances could not be considered a “commencement” document for prior disclosures unless it articulates that a possibility of a violation existed.

# CBP Inquiries & Investigations

Prior Disclosure Regulations 63 FR 29126 – May 28, 1998

**Comment:** Presumption of knowledge should require any notification to be evidenced by a writing. General inquiries (CBPF 28 and 29) should not be used as evidence of prior knowledge of the commencement of a formal investigation of the disclosed violation.

**CBP:** The law does not impose a writing requirement regarding “knowledge of the commencement of a formal investigation” involving CBP notification to the disclosing party.

General inquiries or mere contact with a CBP officer prior to submitting the prior disclosure is insufficient to create a presumption of knowledge.

This is consistent with “shared responsibility”.

Even if a party does not qualify for disclosure benefits, it can obtain substantial mitigation in an ensuing penalty proceeding.

# Liquidated Damages

Imposed for violations of bond conditions. They can be triggered in a number of ways, including:

- Late Filing of Entry Summaries
- Failure to Provide Missing Documents
- Failure to Redeliver
- Shortages, Irregular Deliveries, Nondelivery of Merchandise
- Temporary Importation Violations
- Breach of Warehouse, FTZ Conditions
- Importer Security Filings - 10+2

## You Make the Call! Number 4



Which is the best answer:

- A. A CBPF 28 or 29 requesting information or proposing a rate advance typically is not a commencement of an investigation.
- B. If the CBPF 28 or 29 indicates that CBP is investigating a matter, an importer should not submit a prior disclosure in response.
- C. Once CBP notifies an importer that it took action on a CBPF 29 an importer has knowledge of an investigation so it cannot submit a prior disclosure.
- D. Once CBP takes action on a CBPF 29, an importer can still challenge CBP's position by way of a protest.
- E. A&D both are correct answers.

## V. “Tip the Scale” (Detentions & Seizures)



# Admissibility Issues

- Agriculture: FDA, USDA, APHIS, Fish & Wildlife
- Consumer Products: CPSC, FDA, DOE, FTC
- Food, Drugs, Cosmetics, Medical Devices: FDA, HHS
- Pesticides, Toxic & Hazardous Substances: EPA, FDA, DOT, CPSC
- Textiles, Wool & Fur Products: FTC
- Alcohol & Tobacco: ATF, TTB
- Motor Vehicles, Engines & Boats: EPA, DOT

# Seizures

## SHALL SEIZE:

- Stolen, smuggled, clandestinely imported
- Controlled substance
- Contraband (49 USC App 781)

## MAY SEIZE:

- Health, safety or conservation law violated
- U.S. Government license, permit or other authorization required
- Copyright, trademark or trade name violation
- Trade dress violates court order
- Marking intentionally violates Section 304
- Written notice that previous imports of identical goods from same supplier violated Section 304

# Trademarks & Copyrights

- Registration with Patent & Trademark Office or Copyright Office
- Recordation with CBP
- Licensing agreement
- Trademark, copyright owner authorization
- Paper trail demonstrating sourced from authorized manufacturer
- Nature of infringing mark
  - Counterfeit (seize, forfeit, destroy, fine)
  - Confusingly Similar (obliterate mark, release, pay remission amount)
  - Grey Market (release if not recorded)

## FDA

- Facility registration numbers under BioTerrorism Act
- Facility registration of foreign manufacturers/shippers of pharmaceuticals/devices; Appointed U.S. agent
- Registration of device importers
- 510(k) numbers for medical devices
- ANDA or NDA number for pharmaceuticals
- SID/FCE numbers for acidified foods
- NDC number for pharmaceuticals
- Certification of radiation emitting products; FDA Form 2877
- Applicable import alerts
- Compliant, sufficient labeling
- Verify FDA product code - OASIS

## Detention & Seizure Requirements

- CBP shall decide whether to release or detain 5 days following date merchandise is presented for examination
- Notice of detention shall advise importer or interested party of –
  - Initiation of detention
  - Specific reason for detention
  - Anticipated length of detention
  - Nature of tests or inquiries to be conducted
  - Nature of information which if supplied to CBP may accelerate disposition of detention

## Detention & Seizure Requirements (Cont'd)

- Upon request, CBP shall provide copies of any testing results and description of testing procedures and methodologies.
- Test results and description shall be in detail to permit duplication and analysis.
- CBP's failure to make a final determination with respect to admissibility 30 days after merchandise has been presented for CBP is deemed excluded
- Does not apply to merchandise where admissibility is vested in an agency other than CBP

# Notice of Detention

No. 000000C

**U.S. CUSTOMS SERVICE**  
**Detention Notice and Custody Receipt for**  
**Detained Property**  
Headbook 5700-09

1. Held for other agency? Yes  No   
 Name of Agency: \_\_\_\_\_

2. Certified Mail No. \_\_\_\_\_

3. Investigative Case No. \_\_\_\_\_

4. General Order No. \_\_\_\_\_

5. Exodus Command Center Notified?  
 Yes  No  
 Date: \_\_\_\_\_ Time: \_\_\_\_\_

6. Port Code \_\_\_\_\_ 7. Date of Detention (mm/dd/yyyy) \_\_\_\_\_ 8. Time (Use 24 Hours) \_\_\_\_\_ 9. Entry Number \_\_\_\_\_

10. Detained from: \_\_\_\_\_ 11. Seal or Other ID No. \_\_\_\_\_  
 Name: \_\_\_\_\_ 12. Misc. Nos. \_\_\_\_\_  
 Address: \_\_\_\_\_ 13. Remarks: \_\_\_\_\_  
 Telephone No. \_\_\_\_\_ 14. FP (For IP) (Use Only) \_\_\_\_\_  
 ( ) \_\_\_\_\_

15. Point of Contact Information - Send all correspondence to: \_\_\_\_\_  
 Telephone No. ( ) \_\_\_\_\_ Fax No. ( ) \_\_\_\_\_

16. \_\_\_\_\_  
Special Instruction/Action/Request from Importer/Exporter/

17. Reason for Detention: \_\_\_\_\_

18. Tests or Inquiries to be Conducted: \_\_\_\_\_

19. **EXPORT** (By \_\_\_\_\_ Item) Attach CF 58 if conveyance

a. Line Item No.	b. Description	c. Packages (Qty. Type)	d. Measurement (Qty. UM)	e. Est. Dom. Value	f. Samples Sent to the Customs Lab		
				\$	Yes	No	Date
				\$	Yes	No	/ /
				\$	Yes	No	/ /
				\$	Yes	No	/ /
				\$	Yes	No	/ /

20. Detaining Officer Name \_\_\_\_\_  
 Print \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**21. ACCEPTANCE/CHAIN OF CUSTODY**

a. Line Item No.	b. Description	c. Print Name/Title/Organization	d. Signature	e. Date

Shipments may be detained for up to 30 days, unless statutory authority or interagency agreement mandates that a longer period of time is required, or the importer/exporter/subject requests a longer detention period through the Port Director.

CF 6051A Continuation Sheet Attached? Yes  No  Customs Form 6051D (11/01)



## Seizure Alternatives?

- Reject or Deny Entry
- Detention. CBP provides notice to importer within five (5) days from decision that restriction applies. If not resolved, seizure follows.
- If not prohibited, enter into bonded warehouse or FTZ to correct restriction or defect.
- CBP issues monetary penalty if defect or restriction is corrected.



**Potential  
resolution  
during  
detention  
phase!**

## Election of Proceedings / Options

- Do nothing – CBP initiates forfeiture proceedings by publishing notice.
- Request CBP immediately initiate forfeiture proceedings.
- File a petition for relief. (Most common option)
- File claim and cost bond to institute judicial forfeiture.
- Settle case with offer in compromise.

## VI. “Tips & Tricks” (Case Studies)



## Ruling Example – “Amused by Squishmallows”

- HQ H325768, 12/22/23. CBP in a NY ruling initially classifies plush, whimsical, stuffed articles as pillows. After denying request for reconsideration per 177.2(b)(2)(ii)(C) and requiring ruling request, CBP considers whether amusing as toys per Carborundum factors. CBP draws comparisons to pillow pet toys and indicates do not fit fully into a standard pillowcase nor support a person’s head when sleeping.
  - HELD: Squishmallows are designed to amuse through humanizing features, sold in toy aisles, used as prizes, and awarded as top toy; hence, classified as toys. Nine months later CBP issues revocation of NY ruling per section 625(c)(1) proceeding.



## CBPF 29 Example – “Steel Scrutiny”

- CBPF 29, proposed China origin (coupling stock) not Vietnam (manufacture). Drawings, production instructions, mill lease agreements, inspection reports, production stage photographs, machining / test records all provided. Additional information requested; provide additional leases with meets and bounds of factory, lease payments, employment / utility records, photos of factory front gate, bay doors open, warehouse, satellite images.
  - HELD: Vietnam origin claim accepted.



# Petition Example – “The CAFTA Caper”

- HQ H190377 11/14/11 HQ Voids Denial of Protest. Protest denial listed other reasons for denial of protest not identified in CBPF 29.
  - HELD: CAFTA Eligible



## Reasonable Care Example – “NAFTA Gets the Nod”

- Unpublished Decision. CBP issues §1592 penalties alleging that importers of passenger buses from Mexico and safety garments from Canada negligently made false NAFTA preference claims. In both cases, the importers relied on facially valid Certificates of Origin that appeared to be properly executed.

HELD: The importers exercised reasonable care in relying on the certificates. Penalties and/or duty demands remitted in full!



## Disclosure Example – “Heavy Metal”

- Unpublished Decision. CBP initially sends notices of action as part of its “investigation into the correctness” of aluminum hollow profiles. CBP follows with numerous requests for information and advises about informed compliance and binding rulings program. Importer submits disclosure.
  - HELD: Valid Prior Disclosure.



## Penalty Example – “Clean Bill of Health”

- Cleaning machines subject to 1592 potential loss of revenue claim for failing to include engineering costs, at 40% dutiable value for gross negligence. Attempted prior disclosure. Pre-penalty notice issued four years later. CBP claimed formal investigation, but petitioner only aware of Risk and Analysis Survey Assessment (RASA) for information gathering and informed compliance.
  - HELD: Penalty canceled in full because no “writing” of investigation commencement and RASA used factual circumstances provided by importer.



## Liquidated Damages Example – “Indian Spice”

- Importer delivers galvanized steel tubing to its facility rather than CES. Broker later notifies importer that CBP required exam at CES, so repacked container with broken seal and loose cargo delivered. FPF assesses liquidated damages at three times value for “restricted” merchandise because COO India which is high risk country for destructive pests.
  - HELD: Sufficient litigation risk to settle at \$4,000 and not \$20K or \$10K as offered by FPF. Restricted merchandise pertains to compliance with laws of other agencies, or other requirements not simply a risk from a certain country.



# Questions?



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