

How to Prepare a Prior Disclosure and a Post Entry Amendment

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Tariff Act of 1930 (19 U.S.C. § 1592)

- May not enter merchandise into U.S. by means of false document, oral statement, or to aid or abet any other person to commit such a violation
- *Exception:*
 - Clerical errors or mistakes of fact unless part of pattern of negligent conduct

Maximum Penalties under the Tariff Act

- **Fraud:**
 - Civil penalty not to exceed domestic value of merchandise
- **Gross negligence:**
 - Limited to lesser of:
 - Domestic value of merchandise, or
 - 4x lawful duties, taxes, and fees owed
 - If no effect on duties, then 40% of dutiable value
- **Negligence:**
 - Limited to lesser of:
 - Domestic value of merchandise, or
 - 2x lawful duties, taxes, and fees owed
 - If no effect on duties, then 20% of dutiable value

Prior Disclosure Provision of the Tariff Act of 1930

- **Provides for:**
 - Correction of clerical errors
 - Correction of mistakes of fact
 - Correction for other inadvertence not amounting to error of law
 - Reductions in monetary penalties
 - Non-seizure of merchandise in violation

What is a Valid Disclosure?

- Must be complete
- Must be made before or without knowledge of commencement of formal CBP investigation

Benefits of Making a PD

- Savings in potential penalties
- Periodic assessment of importing activities allows companies to detect and correct errors
- Ensure future compliance with CBP regulations
- Reduced legal expenses
- Elimination of lengthy CBP penalty proceedings and/or investigations

Violations Included in a PD

- Undervaluation
- Misdescription of merchandise
- Misclassification of merchandise
- Overvaluation
- Antidumping/countervailing duty order evasion
- Improper country of origin declarations/markings
- Improper claims for preference under free trade agreement or other duty preference program

Items to Include in a PD

- Identify class or kind of merchandise involved
- Identify importation or drawback claim
- Specify material false statements, omissions or acts
- Set forth true and accurate information or data that should have been provided
- Tender any actual loss of duties, taxes and fees or actual loss of revenue
- Identify all Customs ports where disclosed violations occurred

Scope of Disclosure

- Cover violations not barred by SOL:
 - Fraud:
 - 5 years from date of discovery
 - Gross negligence or negligence:
 - 5 years from date of occurrence

Penalties

- Unliquidated (open) entries and no fraud:
 - Penalty is zero
- Liquidated (closed/finalized) entries and no fraud:
 - Penalty is the interest on the loss of duties
- Fraudulent violations:
 - Penalty limited to one times the duty loss (if no duty loss then penalty reduced to 10% of dutiable value of merchandise)

What is a Post-Entry Amendment?

- Correct classification or valuation errors
- Tender additional duties
- Request refund
- Done before liquidation of entry

What *Cannot* be Filed Under PEA

- Informal entry summaries
- Entry deletion
- Cancellation requests

How to File a PEA

- Individual amendment letter upon discovery of error
- Quarterly tracking report

Elements to Include in a PEA

- Record Number
- Entry Number
- Filer
- Port
- Importer Number
- Reason Code
(designating reason for the change)
- Reason Description
- Narrative Description
- Duty Difference
- Tax Difference
- Fee Difference
- Interest (if appropriate)
- Input Date
- Report Date
- Report Type
- Quarter Error was Discovered (*only for Qtrly Tracking Report*)

Individual Amendment Letter (Single PEA)

- Must be filed at least 20 working days before scheduled liquidation date
- Revenue-related errors in Form 7501 that result in either:
 - Over/underpayment of duties, taxes, and/or fees of \$20 or more; or
 - Any amount relative to ADD or CVD; and
- Non-revenue related statistical information errors that must be reported to Census Bureau

What to Include in an Individual Amendment Letter

- Submit 2 copies of PEA coversheet with reason codes for *each* entry summary (even if filed at same port)
- Revised Form 7501 (Entry Summary)
- Any additional documentation needed to support amendment

Quarterly Tracking Report

- Revenue-related errors resulting in either over/underpayment of duties, taxes and/or fees of *less than \$20* and value below \$10,000; and
- Non-revenue related statistical information errors that need *not* be reported to Census Bureau

Submission of Quarterly Tracking Report

- Formatted in Excel spreadsheet
- Presented to CBP on disc at port where entries filed
- Submitted 15 calendar days from last day of the quarter

Post-Submission of PEA

- If CBP disagrees with PEA:
 - CBP will liquidate entry summary as entered and place entry in 2-week liquidation cycle
- If filer disagrees with CBP's decision:
 - File protest under 19 U.S.C. § 1514
- If PEA is inappropriate for type of claim:
 - CBP will return PEA to filer w/o further processing

Contact Information

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