

U.S. CUSTOMS AND BORDER PROTECTION

Department of Homeland Security

PORT OF DALLAS/FT. WORTH

PUBLIC INFORMATION NOTICE

DATE: 1/9/2007	NUMBER: DFW 07-010	FOR FURTHER INFORMATION CALL: Supervisory Import Specialist David McGurk at (972) 870-7598
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SUBJECT: Prior Disclosure Procedures

Background

A prior disclosure is made when an importer discloses to a CBP officer either orally or in writing the circumstances of a violation of 19 U.S.C. § 1592 or 19 U.S.C. § 1593a either before or without knowledge of the commencement of a formal investigation of that violation.

A valid prior disclosure serves to reduce civil penalty liability but cannot negate criminal liability. In the case of an oral disclosure, the disclosing party is required to confirm the oral disclosure in writing to the Fines, Penalties and Forfeiture Office (FP&F) within ten days.

A person who discloses the circumstances of the violation is required to tender any actual loss of duties, taxes or fees at the time of the disclosure or within 30 days after CBP notifies the person in writing of the actual loss of duties, taxes or fees. Extensions of the 30-day period may be granted.

Failure to tender the actual loss of duties, taxes or fees calculated by CBP will result in the denial of the benefits of prior disclosure. Headquarters review of the calculations is available upon request, when certain requirements are met as established in 19 C.F.R. § 162.74(c).

Post Entry Amendments (PEA) and Supplemental Information Letters (SIL) will not be treated as prior disclosures; they will be processed in accordance to established PEA and SIL policy.

DISCLAIMER: This information has been prepared for your convenience by the CBP officers at the Port of Dallas/Fort Worth. This material is intended to provide guidance. Recognizing that many complicated factors are involved in CBP matters, importers may wish to obtain a binding ruling under 19C.F.R. Part 177. Reliance solely on this information may not be considered reasonable care. Importers are referred to Treasury Decision 97-96, which was published in the Federal Register of December 4, 1997, and in the Customs Bulletin of December 17, 1997, for in-depth information on the concept of reasonable care. Please visit our website at www.cbp.gov

Vigilance ★ *Service* ★ *Integrity*

ELEMENTS OF A PRIOR DISCLOSURE

In accordance with 19 C.F.R. § 162.74(a), a prior disclosure is made if a person concerned:

- Discloses the circumstances of a violation either orally¹ or in writing to a CBP officer before, or without knowledge of, the commencement of a formal investigation of that violation, and
- Makes a tender of any actual loss of duties in accordance with 19 C.F.R. § 162.74(c). The disclosing party may choose to make the tender either:
 - At the time of the claimed prior disclosure, or
 - Within 30 days after CBP notifies the person in writing of the calculations of the actual loss of duties.

The prior disclosure must:

1. Identify the class or kind of merchandise involved in the violation;
2. Identify the port(s) of entry, entry number(s) and dates of the importation(s) included in the disclosure;
3. Specify the material false statement(s) or omission(s) or act(s) including an explanation of how and when they occurred; and
4. Set forth, to the best of the disclosing party's knowledge:
 - the true and accurate information or data which should have been provided in the entry documents; and
 - state that the disclosing party will provide any information or data that is unknown at the time of disclosure within 30 days of the initial disclosure date (extensions(s) of the 30 day period may be requested from the FP&F Officer to enable the person to obtain the information or data)
5. Tender any loss of duties.
6. Be sent to the port of entry(s) where the violation occurred.

LOCAL PROCEDURES

1. All prior disclosures for the Service Port of DFW should be mailed to:

Mailing Address:

Trade Enforcement Coordinator
Customs and Border Protection
PO Box 619050
DFW Airport, TX 75261

Physical Address:

Trade Enforcement Coordinator
Customs and Border Protection
7501 Esters, Ste. 160
Irving, TX 75063

2. If the prior disclosure contains a listing of entry information and/or spreadsheets, that information must be emailed to: CBP.DFW-APPLICATIONS@dhs.gov

¹ Oral disclosures must be followed up in writing within 10 days of the oral communication.

3. It is the responsibility of the importer to provide a breakdown of how the collections should be applied to each entry summary when submitting Prior Disclosures. If the importer chooses not to provide complete documentation, the importer will be forfeiting their right to file a future protest.
4. Interest Due on Entry-by-Entry Prior Disclosures - The disclosing party should calculate the interest amount due for each entry summary and report this amount. Where liquidation is not final, interest accrues on underpayments from the date the original duties are required to be deposited until the date the prior disclosure is filed with payment. See 19 U.S.C. § 1505.

For purposes of calculating the prior disclosure penalty in cases in which liquidation is final, and the violation is determined to be the result of negligence or gross negligence, the interest is computed from date of liquidation to the date that the prior disclosure is filed with additional payment of duties, taxes and fees. See 19 U.S.C. §1592(c)(4)(B).

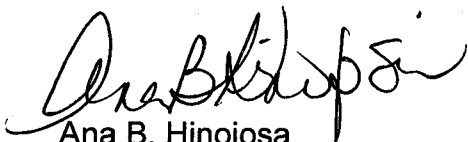
If a party submits a prior disclosure disclosing that it has violated 19 U.S.C. § 1592 by means of fraud, and the prior disclosure is determined to be valid, the penalty is calculated pursuant to 19 U.S.C. §§ 1592(c)(4)(A) and 1593a(c)(3).

5. Consolidation of multi-port Prior Disclosures - In addition to identifying all affected ports of entry, the importer should specify the CBP Area/Port(s) where the majority of the involved entries were filed.

Additionally, if the Office of Regulatory Audit is currently conducting an importer audit involving the same issues as those included in the claimed prior disclosure, importers should disclose the CBP Area/Port where the audit is being conducted.

6. Statute of Limitations Waiver - Importers are responsible for identifying the oldest entry subject to the prior disclosure. If the entry is three years or older, the importer should file a Statute of Limitations Waiver in order to receive consideration of their prior disclosure (Appendix A). Failure to do so could result in a "fast track" processing of the disclosure without extensions.

For more information on prior disclosures, please consult www.CBP.gov. Questions concerning this notice should be referred to Supervisory Import Specialist David McGurk at (972) 870-7598.



Ana B. Hinojosa
Area Port Director
Dallas/Ft. Worth International Airport

Appendix A

Fines, Penalties and Forfeitures Officer
Dallas/Fort Worth Port Office
7501 Esters Blvd, Suite 160
Irving, TX 75063

Dear Fines, Penalties & Forfeitures Officer:

Name of Party, hereby waives the period of limitations contained in 19 U.S.C. §1621 and any other applicable statute(s) of limitations with respect to **# of entries** U. S. Customs and Border Protection (CBP) entries of **description of articles entered**, entry numbers which are listed on the attached document and entered at the Dallas/Fort Worth Port Office, for a period of two (2) years. The two year period for this **(initial or subsequent)** waiver commences with the date of **execution or previous waivers expiration**. **Name of Party**, agrees that we will not assert any statutes of limitations defense in any action brought by the United States Government concerning the entires designated in the attached listing with respect to the two (2) year period for which the statute of limitations is hereby waived in **Name of Port**, Case Number _____.

This waiver is made knowingly and voluntarily by **Name of Party** in order that **Name of Party** might obtain the benefits of the orderly continuation and conclusion of an administrative proceeding currently being conducted or contemplated by CBP, in which CBP is reviewing all of the formal CBP entries designated on the attached listing of **Description of Articles Entered** from **Date of Earliest Entry** to the present.

Date: _____

By: **Name of Party**
Address of Party

I hereby acknowledge receipt and acceptance of the above waiver.

Date: _____

FP&F Officer
Dallas/Fort Worth Port Office

Date

LISTING OF ENTRIES COVERED BY STATUTE OF LIMITATIONS WAIVER

Entry Number

Date of Entry