

Should You Consider Making a Prior Disclosure?

The prior disclosure law provides reduced penalties to parties who advise Customs of noncompliance with import laws before Customs discovers and notifies the party of the possible noncompliance. Valid prior disclosures can save a company time and money, and in some cases, reduce a monetary penalty to zero.

Title 19 U.S.C. § 1592 permits Customs to assess monetary penalties against parties for errors in their entry documents such as valuation mistakes, merchandise misdescription, antidumping/countervailing duty order evasion, improper country of origin declarations or markings, or improper claims for preference under a free trade agreement or other duty preference program.

A party must make a prior disclosure of a violation before or without knowledge of a formal Custom investigation. If the importations involve open Customs entries and no fraud is involved, then the penalty is zero. If the entries are closed or finalized and no fraud is involved, the penalty is the interest on the loss of duties. If a fraudulent violation is disclosed, the penalty is reduced.

An importer may obtain benefits for disclosing violations not covered by a Customs investigation. Suppose, for example, Customs has commenced an investigation of a company's 2005 imports involving undeclared royalties paid to a supplier. If the company makes a prior disclosure of merchandise misdescription involving the same shipments, then the company may obtain disclosure benefits since the Customs investigation only related to the royalty violations. Additionally, Customs recommends that an importer use the time period before an audit begins to conduct a self-assessment of its importations to determine if a prior disclosure submission is warranted.

Importantly, a prior disclosure submission that gives Customs reason to believe a criminal violation has occurred could possibly expose an importer to criminal prosecution, particularly in the case of fraudulent violations. Customs is legally obligated to refer a possible criminal violation to the U.S. Attorney's office. Generally speaking, a validly disclosed, non-fraudulent violation rarely is prosecuted, according to Customs.

By: Dan Curry, Esq.
(212) 709 - 8274
dan@danieljcurry.com

Source: ABC's of Prior Disclosure, CBP Informed Compliance Manual.