

New CBP Prior Disclosure Requirements

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Introduction

Effective beginning November of 2021, U.S. Customs and Border Protection (CBP) updated its Prior Disclosure (or PD) extension request guidelines. The new requirements, which have **not** been circulated publicly, streamline but shorten the amount of time available for Prior Disclosure filers to perfect their disclosure. Previously, from our firm's personal experience, CBP routinely granted requests for 180 days to perfect a Prior Disclosure, and if additional extensions were needed they were routinely granted. However, CBP has now significantly shortened extension periods to 30 days with only one additional 60-day extension granted (more details below). Due to the potentially large amount of work needed to perfect a Prior Disclosure, this shortening of the time to perfect makes the Prior Disclosure process more onerous for importers seeking to proactively disclose their suspected violations. Even worse, the limitation of time to perfect a disclosure opens up the possibility that an importer may disclose a violation to CBP, not have the opportunity to perfect the disclosure, and lose the benefits of the PD protection, allowing CBP the ability to penalize the importer. This article provides a background on CBP prior disclosures, explains the new requirements, and identifies best practices.

Background on Prior Disclosures

If a company or individual believes it has violated the law by making a material false statement in connection with their importations, and it is before CBP has commenced a formal investigation, proactively and voluntarily disclosing the potential wrongdoing can substantially reduce penalties.

CBP is chiefly responsible for enforcing [19 U.S.C. § 1592](#), a statute under which CBP can assess monetary penalties against persons who make material false statements, acts, or omissions in connection with their importations. "Person" includes importers, exporters, agents, manufacturers, and consignors. Aiding or abetting any person committing such act or making such an omission is a violation of the CBP statute. The statute, 19 U.S.C. § 1592, provides CBP the ability to enforce penalties upon persons that do not provide accurate information pertaining to their imports.

Common examples of false statements, acts, or omissions pertaining to imports include:

- Under- or over-valuation
- Misdescription of merchandise
- Misclassification under the Harmonized Tariff Schedule of the United States (HTSUS)
- Evasion of an antidumping or countervailing (AD/CVD) duty order
- Improper country of origin markings
- Improper claims for preferential treatment under a free trade agreement or other duty preference program

A PD is often submitted in two components: (1) a "blanket" PD, and (2) a "perfected" PD. If you have identified a potential violation that CBP has not begun to formally investigate and you wish to benefit from the PD process, filing an initial blanket submission (orally or in writing) is the first step. You can begin this process even you do not have all of the facts and details gathered.

Initial Submission

This initial submission is often referred to as a “blanket” submission. Pursuant to **19 CFR § 162.74(b)**, and CBP’s Informed Compliance Publication (ICP), **“What Every Member of the Trade Community Should Know: Prior Disclosure,”** the initial submission should:

- Identify the class or kind of merchandise involved in the violation;
- Identify the importation or drawback claim included in the disclosure by entry number, drawback claim number, or by indicating each concerned Customs port of entry and the approximate dates of entry or dates of drawback claims;
- Specify the material false statements, omissions or acts including an explanation as to how and when they occurred; and
- Set forth, to the best of your knowledge, the true and accurate information or data that should have been provided in the entry or drawback claim documents.

CBP’s ICP on Prior Disclosures contains an invaluable checklist of all PD requirements in Appendix A.

Perfecting a Prior Disclosure

If you require additional time to gather information, you should state in your initial PD that you will require time to perfect your PD. According to **19 CFR § 162.74(b)(4)**, you have 30 days to gather this information. The perfected PD should also describe:

- Identify the class or kind of merchandise involved in the violation;
- Identify the importation or drawback claim included in the disclosure by entry number, drawback claim number, or by indicating each concerned Customs port of entry and the approximate dates of entry or dates of drawback claims;
- Specify the material false statements, omissions or acts including an explanation as to how and when they occurred; and
- Set forth, to the best of your knowledge, the true and accurate information or data that should have been provided in the entry or drawback claim documents.

New CBP Prior Disclosure Policies

CBP Headquarters published a National Policy Directive, effective in November of 2021, establishing stricter requirements for the time allotted to perfect Prior Disclosures. Although the Directive is not available for public view at the time of this writing, under the new policy:

- Importers may verbally inform CBP of their intention to submit a Prior Disclosure and then have 10 days to submit an Initial Prior Disclosure in writing;
- Upon the filing of an Initial Prior Disclosure, Prior Disclosures must be perfected within 30 days;
- The deadline to submit a Perfected Prior Disclosure may be extended only once for a period of 60 days;
- Any additional time (allegedly only for extraordinary circumstances) may only be granted by the express consent of the Director of Field Operations.

Best Practices

Practice Tip: The best way to stay compliant is to ensure that violations do not occur in the first place. To proactively stay compliant, pre-compliance practices included in the **Top 10 Tips When Importing** are essential. Key tips are summarized below:

- **Keep records to show you used reasonable care** – To ensure you are using reasonable care, confirm compliance with the **reasonable care checklist**.
- **Confirm use of the correct HTSUS classification** – The **HTSUS** is the legally recognized mechanism for determining tariff classifications for goods being imported into the United States. If you are unsure how your product is classified, you may request a **binding ruling** from CBP.
- **Confirm use of the correct value for your product** – When importing, accurately valuing your product and ensuring the payment of the correct corresponding duties is an important aspect of exercising reasonable care. Furthermore, from CBP's perspective, ensuring that your imports are valued correctly is critical because doing so ensures that CBP is collecting the correct amount of duties and fees. Protecting revenue is a priority trade initiative for U.S. CBP. CBP's premier guidance including all relevant binding rulings on valuation is CBP's **Valuation Encyclopedia**.
- **Confirm you're listing the correct Country of Origin (COO)** – If you source products from multiple countries and are unsure about whether your product is substantially transformed in the last country of production, or unsure of which COO to mark your goods with, you may request a binding ruling from CBP.

Please Note: A Valid Prior Disclosure Does Not Protect You from Criminal Liability

If you submit a PD containing information that gives CBP reason to believe that a criminal violation has occurred, CBP and/or Homeland Security Investigations (HSI) is obligated to refer that information to the appropriate U.S. Attorney's Office. The U.S. Attorney's Office decides whether or not to prosecute the alleged criminal violation.

Conclusion

A Prior Disclosure is an invaluable tool for importers seeking to proactively comply with CBP import requirements. Filing Prior Disclosures can substantially reduce the likelihood of civil penalties and can at times reduce the likelihood of criminal enforcement. Nevertheless, the Prior Disclosure process can be involved and detail-oriented. The new CBP guidelines shortening the time period to perfect make the Prior Disclosure process more burdensome. For this reason, it is now more important than ever essential for importers to seek appropriate legal counsel and carefully work through the numerous requirements of the Prior Disclosure process.