

G.TEC 2017
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Communicating with CBP Before the Crisis

How to communicate prior to there being
a crisis; proper approaches to take.

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Triggers - Potential Crises

- CBP Form 28 and 29
- Prior disclosure in 1592 cases
- Detentions
- Seizures
- Penalties
- Audits
- Investigations
- Advanced Rulings

Triggers – CBP Form 28/29

- Under 19 U.S.C. 1484, importers are required to exercise reasonable care in filing documents
 - admissibility of merchandise, the correct classification, value, and compliance with all other laws and regulations.
 - Section 1592 provides that a party files a “false” entry when the required information is incorrect
 - enables CBP to collect past duties and civil penalties for shipments over the past five years.

Triggers – CBP Form 28/29

- While 28s and 29s are routine – they typically precede a penalty or investigation
 - Should be taken seriously and given top priority
- A Form 28 is issued where there is insufficient information on the entry summary to determine admissibility, the appraised value, or the correct classification of the merchandise.

Triggers – CBP Form 28/29

- Seek and follow the advise of your CHB and Legal Counsel
- May want to discuss with CBP what triggered the inquiry to avoid similar issues in future
- Respond promptly and professionally
 - 30 days
 - Determine who will respond
- Respond completely and concisely but don't volunteer extraneous info

Triggers – CBP Form 28/29

- Form 29 has two uses:
 - That additional duties have been assessed
 - That additional duties are proposed
 - Have 20 days to respond
 - A failure to respond results in increased duties
- Where proposed – the same tips for addressing a CF 28 also should be followed

Triggers – CBP Form 28/29

- Form 29 may serve as commencement of a “formal investigation”
 - Does language state that CBP suspects a violation?
 - Communicate that CBP is looking beyond the cited entry?
- If CF 28/29 initiates a “formal investigation,” importer’s receipt creates presumption of knowledge

Triggers – Prior disclosure

- Make sure the disclosure meets the legal requirements to be valid
- File it before you have knowledge of the commencement of an investigation
- If CBP advises that you may want to consider filing a disclosure – make sure you are compliant if you opt not to
 - May want to reach out to your Account Manager to discuss

Triggers – Detentions

- Customs has five days in which to release merchandise after arrival, after which it is considered to be “detained.”
 - Customs typically will detain the goods while it decides what course it wishes to pursue.
 - If Customs does not make a decision as to admissibility within 30 days of the detention, the law assumes that Customs has decided to exclude the merchandise from entry.
 - Importer can file a protest against the exclusion

Triggers – Detentions

- Where an importer receives a Notice of Detention – carefully review the the specific reason for the detention
- If there is a basis for asserting there has been no violation – contact Customs immediately to work towards release
 - If Customs does not make a decision as to admissibility within 30 days of the detention, the law assumes that Customs has decided to exclude the merchandise from entry.

Triggers – Seizures

- If a violation does occur, the merchandise will be seized
- The Seizure Notice will identify what and where the cargo was seized, as well as the legal basis for the seizure
- Consider filing a Petition –
 - Timely file within 30 days
 - Identify arguments to persuade CBP to release the goods such as why a violation did not really occur, or mitigating factors in favor of releasing the cargo.

Triggers – Penalties

- Penalties can be issued for a number of reasons but most frequently are issued to importers for a false statement under 19 USC 1592
- Typically penalties are proceeded by a CBP Form 28 or 29 or result from an Investigation or an Audit
- Sometimes the Importer is warned that they should consider filing a prior disclosure

Triggers – Penalties

- Administrative process
 - Prepenalty response
 - Petition and oral conference
 - Oral conference – waived if not requested
 - May file supplemental petitions if circumstances warrant it
- If outcome is unfavorable, do nothing. Government must sue and has burden of proof.

Triggers – Audits

- Anytime an Importer is audited it should ensure adequate preparation and should be represented by Legal Counsel
 - Avoid the notion that if you have an Attorney it means you have something to hide
 - Consider conducting some testing in advance of the audit entrance conference
 - If there are weaknesses that led to errors, file a prior disclosure before the entrance conference

Triggers – Investigations

- If Government Shows Up at Company
- Have a policy:
 - Designate contact person and alternate
 - Ask for ID and any authorizing documents
 - Contact appropriate personnel, including Law Dept. or outside counsel
- Truthfulness must be provided

Triggers – Investigations

- During the visit:
 - Be professional and courteous
 - Meet in area separate from records
 - Provide escort
- Determine scope and negotiate “rules”
 - Notate questions and responses, documents requested/provided and parties interviewed

Triggers – Advanced Rulings

- Provide a transparent and efficient means of understanding how CBP will treat a prospective transaction.
- Ruling letters facilitate trade by enabling companies to make business decisions that are dependent on how their goods will be treated on importation.
- Fully describe the transaction(s), if there are various options dependent on facts, fully lay out all options.

