

February 24, 2010

U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, NW  
Washington, D.C. 20229

ATTN: Charles Ressin, Chief, Penalties Branch

**Re:** Use of CBP 28 and 29s to Deny Prior Disclosure

Dear Mr. Ressin:

On behalf of the American Association of Exporters and Importers (AAEI), the Association respectfully requests that U.S. Customs and Border Protection's (CBP) address an issue recently raised by our members concerning changes in CBP's collection of information and regulatory compliance. As you know, AAEI has been a national voice for the international trade community in the United States since 1921, and we have a long-standing commitment to the sound administration of the customs laws of the United States in our unique role in representing the broadest base of the international trade community. We hope that you view the concerns raised below in the spirit of "shared responsibility" and "reasonable care" which is at the heart of Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), the Customs Modernization Act.

Our members are concerned about the use by Customs of CBP Requests for Information and Notices of Action. Our concern is over two related issues: One, Customs declaring that the issuance of those notices precludes a prior disclosure and Two, Customs' language on those forms implying that a formal investigation is open, when in fact that might not be the case.

We request that CBP address these issues and confirm that CBP has not changed its long-standing policy that the only way that CBP can commence an investigation under 19 C.F.R. § 162.73 is through the issuance of a notice of investigation. Moreover, we respectfully request that CBP reconfirm that CBP encourages the filing of prior disclosures to maintain compliance under "reasonable care." We also request that CBP explain the Agency's use of CBP 28s and 29s and their relation to the Customs Regulations and the ability of importers to make a valid prior disclosure.

For example, we are aware of recent instances where Customs has declared that the issuance of a CBP 28 and/or 29 should be interpreted by the importer that an investigation has begun, and has denied a prior disclosure on that basis. This has occurred even though Customs has offered no proof that a formal investigation was initiated. This action by Customs is contrary to long standing court decisions, rulings and practice.

Additionally, we are aware that recent CBP 28s are being issued by the ports with language like "...failure to provide information could lead to penalties under 19 U.S.C. § 1592" or "this office is investigating the classification of...". We have heard that Customs is pointing to this language to deny the benefits of a prior disclosure. Both of these statements are generic and do not necessarily mean that a formal investigation, as required by the law, the courts (e.g. *Ford Motor Corp.*) and Customs' regulations, has been opened.

U.S. companies that import require certainty and adhesion by Customs to its regulations. We look forward to Customs' explanation of their use of these notices and the effects on Prior Disclosure.

Sincerely,

Marianne Rowden  
President & CEO

cc: Kim Marsho, Director of Trade Relations, CBP