

Baldwin's response, which was dated July 13, 2010 but received by AAEI on September 10, is reprinted below:

Thank you for your letter to Charles Ressin, Chief, Penalties Branch, dated February 24, 2010, in which you requested that U.S. Customs and Border Protection (CBP) "explain the Agency's use of CBP Form 28s and 29s and their relation to the Customs Regulations and the ability of importers to make a valid prior disclosure." CBP acknowledges the trade's concern regarding this matter.

As you may know, CBP does not issue rulings of general information letters relating to matters involving fines, penalties and forfeitures. (See 19 C.F.R. (§) 177.0.) On the other hand, with regard to the general interpretation of the prior disclosure provisions under section 1592, we invite your attention to 19 C.F.R. (§§) 162.74(g) and 162/74(i)(i) as amended by [T.D. 98-49](#) (63 Federal Register 29126, May 28, 1998). In this T.D., we responded to a commenter who had proposed that the Forms 28 and 29 "cannot be considered written evidence of a commencement of a formal investigation," by explaining that CBP would consider the substance of the information contained on the Form 28 or 29, rather than exclude such evidence from consideration. CBP applies these regulations, and this analysis, to each situation on a case by case basis, with an examination of the specific facts and circumstances of each case.

As a matter of law, the Forms 28 and 29 may be considered a "commencement document" for prior disclosure purposes. As a matter of policy, the Form 29 can and will be used as a document commencing a formal investigation and providing notification to the importer. As a matter of policy, however, the CBP Form 28 alone should not be routinely considered a "commencement document." CBP will be issuing clarifying guidelines that will set forth the circumstances in which the Form 28 may be so used.

The official policy of CBP is to encourage the submission of valid prior disclosures. We do not wish to engage in any practice that works counter to this policy. Thank you for bring [*sic*] this issue to our attention.