



# **Customs Violations and Prior Disclosures in the United States**

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I.E. Canada  
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## What is a 1592 Violation?

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- > Material false statement  
Act or Omission
- > In connection with an importation

## Three Levels of Culpability

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- > Negligence
  - > “oops”
- > Gross negligence
  - > “I know, but who cares?”
- > Fraud
  - > “Here’s an idea . . . .”

## Common violations

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- > Classification
- > Valuation
- > Failure to pay ADD/CVD
- > Invalid FTA claim

## Penalty process

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- > Prepenalty notice
- > Importer response
- > Penalty notice
- > Petition to mitigate
- > Supplemental, Second Supplemental
- > Offers in compromise

## Why Disclose?

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- > To protect yourself
- > To avoid penalties
  - > Except interest
- > Generate goodwill
- > Avoid investigation

## Who can disclose?

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- > Anyone . . .
- > Who has a violation
- > Or aided or abetted a violation



## When to Disclose?

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- > It is a business decision
- > To be made with legal advice

## Questions to ask

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- > Is there a violation?
- > What's the risk?
- > Was it last week or three years ago?
- > What if it was six years ago?

## Quantify the exposure

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- > 2X duties owed
- > 4X duties owed
- > Forfeiture value
- > Is that real money?
- > Non-revenue violation problem



## Timing the disclosure

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- > Herding cats
- > Lining up ducks

## Herding cats

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- > Disclose now
- > Sort it out later
- > Complete the internal review
- > Calculate duty due

## Perfecting the disclosure

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- > Perfect within 30 days, or the extension period
- > Tender, or . . .
- > Wait for Customs to confirm the amount and then tender

## Do so when . . .

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- > An investigation is imminent
- > CF29
- > CF28
- > Detention

## Lining up ducks

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- > Thorough internal review
- > Preserve attorney-client privilege
- > Calculate revenue loss
- > Compile supporting documents
- > Prepare submission with tender

## Advantages

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- > Cuts off running of interest
- > Interest is the penalty, not compensation

## How to disclose

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- > It's a legal process
- > Point is liability avoidance
- > Not conscience clearing
- > Requires an admission of liability
- > Need legal and upper management review

## Filing

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- > File at the port involved
- > Reference other ports, send copies
- > Must be complete . . .
- > Or it is a tip against yourself.

## Disclose the circumstances

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- > Orally or in writing
- > Class or kind of merchandise
- > Importation (or drawback claim) involved
- > By entry number or . . .
- > By port and date
- > Usually five years

## **Specify the false statement or omission**

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- > Set forth true and accurate information
- > Agree to provide unknown additional info within 30 days

## **Before, or without knowledge of, the commencement of an investigation**

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- > Commencement is the date recorded by Customs that . . .
- > Facts or circumstances were discovered . . .
- > Or information was received by Customs that . . .
- > Caused Customs to believe a violation existed.

## Burden

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- > Discloser has the burden of proving lack of knowledge.
- > Knowledge can be presumed where . . .
- > Customs informed the importer of the circumstances.
- > Inquiries from a Special Agent
- > Prepenalty notice issues
- > Seizure
- > The presumption is rebuttable.

## Tender

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- > Actual loss of duty plus interest
- > Voluntary overpayments are hard to recover.

## Alternatives

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- > PEA
  - > Reconciliation
  - > Prayer
  - > Lastly . . .
  - > FIX WHAT YOU DISCLOSE.
  - > Next time, it is gross negligence



# Thanks

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