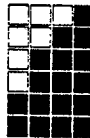


THE 2ND CUSTOMS COMPLIANCE AND INTERNATIONAL TRADE INSTITUTE

November 5-6, 1998 • The Swissotel (Watergate) • Washington, DC

SECTION 5

A PROACTIVE STRATEGY FOR INVESTIGATIONS



Business Development Associates, Inc.

8720 Georgia Avenue • Suite 1000 • Silver Spring, MD 20910 • 301-565-2299 • Fax 301-588-1035

**THE 2ND CUSTOMS COMPLIANCE
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**JEFFREY L. SNYDER
SONNENSCHN NATH & ROSENTHAL**



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**A PROACTIVE STRATEGY
FOR INVESTIGATIONS**

**The Second
Customs Compliance
and
International Trade Institute**

Washington, DC

November 6, 1998

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A Proactive Strategy for Investigations

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Part I. Investigations: Why Should You Care?

- A. Investigations may seem rare, and most importers may never experience one. Nevertheless, as a significant aspect of Customs enforcement process, they cannot be ignored. In contrast to businesspersons, lawyers tend to look at commercial activity and see legal exposure. From this perspective, an investigation is one of the most fertile events in the life of an importer.
- B. An investigation is one special type of interaction between Customs and importers. Knowing what an investigation is and what importers can in response do yields the ability to learn that investigations, like other interactions with Customs, can be managed.
- C. Customs investigative priorities (example of one port):
- narcotics
 - money laundering
 - customs fraud
 - export control violations
- D. Within Customs Fraud:
- transshipment
 - foods and medicines
 - chemicals
 - country of origin
 - antidumping
 - valuation
 - counterfeit merchandise
- E. Jargon. Office of Investigations (OI), Import Specialist Enforcement Team (ISET), Special Agent in Charge (SAC), and Fines, Penalties & Forfeitures (FP&F).

- F. Outside Assistance. It is common for lawyers to be involved in investigations, and it is also common for lawyers to get involved at the last minute, unfortunately.
- G. An investigation is the activity that occurs after Customs determines there is reason to believe a violation has occurred and before formal action is taken to pursue criminal or civil sanctions. Focus here on commercial fraud investigations under section 592 (though there are many others; Customs enforces the laws of over 60 other federal agencies).
- H. Report of Investigation (ROI) is rarely released to importers, and when it is, it often contains substantial redactions. They contain the findings of OI during the investigation. Importers must be vigilant as to the scope of the investigation and any subsequent penalty action.

Part II. Avoiding Investigations Altogether

- A. The best approach to investigations is to avoid them through a comprehensive and effective program of compliance.
- B. No company is perfect. It is what importers don't know that is the source of trouble. Ignoring those areas is not a good idea. The odds were never in favor of that approach, and they have become worse with the Mod Act.
- C. Prudent importers explore, manage, and reduce the problem areas. They use internal reviews and prior disclosure. They are aware that corporate officers have liability under 592 if they knowingly participate in the violation.
- D. Regardless of the level of preparation, investigations happen. When and if they do, the prudent importer will be more prepared to respond, and is more likely to be able to terminate the investigation favorably and quickly.

- E. Because no amount of preparation and planning can prevent an investigation, every company must have a contingency plan. Build into your internal compliance program a feature that addresses what Customs-related personnel should do in the event of an investigation, whether reflected by correspondence from Customs or an Agent's visit, or otherwise. You are all familiar with the term "audit ready" and should also consider being "investigation ready."

Part III. How and When Investigations Begin

- A. The most obvious way to tell that an investigation has begun is to be notified by Customs. A sample letter initiating an investigation of an importer is included in Attachment 5.
- B. The most specific legal definition of when an investigation begins is the one in the law that operates to preclude a prior disclosure. The Mod Act provides that Customs must have a written record of the initiation of an investigation if it wishes to preclude a prior disclosure. A summary of the Mod Act provisions on this subject is included in Attachment 7.
- C. Importers should be concerned about any type of activity that draws attention to its operations. For instance, if they receive visits from Customs personnel; inquiry correspondence from Customs; above-average delays in liquidation (especially now that the cycle has been extended); and, above-average inspection time at port.
- D. Recently, Compliance Assessments have lead to investigations. During their visit the CAT identifies information or substantiates suspicion that a violation may have occurred. The Compliance Assessment process encourages self-evaluation and disclosure.

- E. Request for Information (CF28; sample included in Attachment 1; a sample CF 29 is included in Attachment 2). This is the most common form of interaction, apart from entry, between Customs and importers. These can be routine, or they can be serious. Accordingly, every single one must be taken seriously and used to evaluate every aspect of the entry. In addition, consider (1) the number and frequency of requests; (2) their specific content; and, (3) the experience of other importers in your industry, if you know it.
- F. Seizures. Customs seizure authority is invoked by any Customs officer who has reasonable cause to believe a person is introducing or attempting to introduce merchandise into the US contrary to law. Seizure authority is generally not used in the case of 592 type violations, but the intervention in the company's operations, even if the seizure is ultimately resolved favorably, can lead to an investigation.
- G. Disgruntled employees. Many importers are not familiar with the concept of moiety, a cash payment that Customs will make to any individual that supplies original information to Customs that leads to revenue.
- H. Competitors. This may seem awfully underhanded, but it is more common than you think. I have many times been asked to bring the practices of a competitor to Customs' attention.
- I. Zealous Import/Commodity Specialists and Inspectors. The volume of trade that passes before the eyes of these two parts of Customs is vast. How they select what to be concerned about is a science within Customs, of course, but those who do their job very, very well produce more investigations than others.
- J. Expansion of a Previously Unrelated Investigation. This method of investigation unfortunately catches many importers by surprise. They may believe that Customs

cannot discover a problem they know about; an investigation of a competitor, a broker, or others can sometimes lead them to the imports door.

- K. Prior Disclosure. Don't forget, a prior disclosure is the admission of a violation, which triggers an automatic opening of an investigation by Customs. Consider this fact in any decision whether to submit a disclosure.

Part IV. What to Do

- A. No matter how you learn about the fact of an investigation, the most important step is to act quickly to get in control of the situation and manage the investigation.
- B. Stop doing whatever it is that is the conduct that is the subject of the investigation. Do not create more liability.
- C. Document management. Establish a system that gives immediate and effective access to documents. Remind everyone that documents cannot be destroyed.
- D. Communications. Early on, establish a specific and limited channel of communications with Customs. Give guidance to employees not to speak with Customs or respond to their inquiries.
- E. Prior Disclosure. Although you now may have an investigation, consider whether a prior disclosure as to other activity may be warranted.
- F. Establish a working relationship with agents. Be sure they know how you would like communications to occur. Control as much as you can.

Part V. Summonses, Subpoenas, and Search Warrants

A. Administrative Summons (sample included in Attachment 3).

1. Examination of records and individuals. Customs may, to ascertain the correctness of any entry, duty liability, compliance, or penalty, review records or interview individuals.
2. Summons. For the same purposes, Customs may summons, upon reasonable notice, importers, exporters, carriers, brokers, and other related individuals to appear before the appropriate customs officer and the individual may be required to produce records specified in the summons.
3. Don't let them turn into judicial subpoenas. Deal with them before Customs goes to court.
4. Ensure that all documents are reviewed for privileges that may apply.
5. Find out why the summons is necessary. Can it be withdrawn in exchange for an informal agreement to provide information?
6. Explore flexibility in the schedule. This can signal the intensity of Customs' objective.
7. Consider seeking to narrow the scope, or deferring certain documents until after an earlier set is provided.
8. Consider staging a response, such as entry packages first, then proof of payment, etc.
9. Evaluate key terms: would definitions work in your favor? Any value in negotiating defined terms?

10. Learn from the summons. What is it seeking? What is it not? Why would Customs ask for that information?
 11. Establish clear expectations with Customs over the mechanical aspects of responding.
- B. Search Warrants (sample in Attachment 4).
1. Any authorized Customs officer who has probable cause to suspect the presence of merchandise upon which duties have not been paid may apply to a federal court for a search warrant to search for and seize such merchandise.
 2. More serious than a summons, since Customs will have had to have gone to court to obtain it, and must have persuaded a judge that they have probable cause to believe that a crime has been committed. Objectives include:
 3. Delay or prevent execution of the warrant. Ensure that privileges are respected. Establish whether copies can be kept of crucial business documents; outline a protocol for electronic records and daily business records.
 4. Minimize the disruption to the business. Cooperate with but do not consent to the search.
 5. Prevent expansion of the search to on site employee interviews and other forms of information gathering. Monitor the search and document what is being seized.
 6. Use it to learn about the investigation; interview agents and others conducting search; obtain warrant affidavit.

7. See Frank & Blum, Handling U.S. Agents Bearing a Search Warrant, National Law Journal, at C23, Mon. April 17, 1995.

Part VI. Proactive Strategies

- A. Once you get beyond the immediate moments of the investigation, you need to move from crisis management to proactive strategy.
- B. Start factual investigation. Deploy company resources to get out in front of the investigation and begin to determine the scope of the problem. Don't limit yourself to what Customs is looking at, go further.
- C. Prevent Criminal Referral, if Possible. Once an investigation has begun, be aware that one outcome is a referral to the Department of Justice for criminal prosecution. This is very common in monetary reporting cases, and others. The earlier and the more effective the company addresses this, the more likely that you can head it off. The agents will usually tell you if they are considering a criminal referral. If so, get experience criminal counsel involved.
- D. Civil Referral; Waiver of the Statute of Limitations. Depending on the timing of the investigation, the importer may be faced with a request from Customs to waive the statute of limitations in anticipation of a referral to the Justice Department for civil collection action.
- E. Minimize disruption to the business by organizing an effective team that will manage the work that needs to be done. Limit the number involved, and control information going out to

avoid rumors and the possibility that some one could make it worse.

- F. Work backwards. This means that in undertaking specific activity during the course of the investigation, consider making a record that will help the company later. Get ahead of the game. Anticipate the next turn in the investigatory process and go there. One approach is "reason in reverse." Where is Customs going? Where would they like to go? Go there first, and work back to where Customs is.
- G. Prepare for the Penalty Action. This can offer guidance in a turbulent time.
 - 1. FP&F Handbook. When the Office of Investigations completes its work (or some portion of the overall work that they complete), it will send the Report of Investigation (ROI) to the Office of Fines, Penalties & Forfeitures, FP&F. The Handbook contains the standard approach that FP&F will use in assessing penalties, including mitigating and aggravating factors. Consider pursuing the mitigating factors and eliminating or avoiding the aggravating factors.
 - a. Contributory Customs Error. This is the first of the mitigating factors. Explore whether the importer has any grounds to argue that Customs contributed to the conduct that constitutes a violation.
 - b. Cooperation. This means real cooperation, above and beyond just answering Customs questions.
 - c. Immediate Remedial Action. Determine if immediate action can be taken that will address the cause of the violation at issue. For instance, termination of renegade employee(s).

- d. Inexperience in Importing. This is a hard one to use unless there truly is a slim history and the violation is directly related to the inexperience.
 - e. Prior Good Record. This is another reason why compliance programs are so important.
 - f. Extraordinary Mitigating Factors. This is the invitation from Customs to argue special factors in the importer's case that may not be part of the FP&F Handbook. Be creative and consider developing mitigation based on an appeal to the equities of the situation and the compliance focus of Customs. Customs says that "Penalty and Mitigation decisions will focus both on redressing prior violations and facilitating future compliance. This may include, in some instances, offsetting penalty amounts against a violator's expenditures to institute internal controls and corrective actions to prevent future non-compliance."
 - g. Avoid aggravating factors, if possible. They include: obstructing the investigation, withholding evidence, providing misleading information concerning the violation, transshipment, and prior violations.
2. Other approaches. Other paths must be taken in accordance with the specific conduct at issue. For instance, if a renegade employee is at the heart of the violation, a strategy must be developed that distances the company, but does not show neglect.
 3. Remember the Court. Long after the investigation is completed, sometimes years later, the CIT will become involved in reviewing the importer's conduct. Remember that your strategy should include not only the Customs audience, but also the Court. The Court

will not hesitate to recognize other mitigating factors and to look anew at the position Customs has taken.

- H. Manage the flow of information that goes to Customs. Be responsive, yes, but package information to answer natural questions that will arise and place in the best light possible. Your submissions must be informed, scaled, and aligned with corporate and regulatory objectives.
- I. Follow through. Customs rarely forgets. There is an old saying, the law sometimes sleeps, but never dies. This might well be said of Customs. Those who hope that something will just "go away" do so at their peril.
- J. Avoid common pitfalls. One observer's advice: "At some point, after the fact of the investigation has become public, through some director or corporate officer, the name of someone who claims special access to a government decision-maker (often the wrong one) will surface. This fixer, because of a special relationship formed on the playing fields of some college or country club, will be able to persuade the decisionmaker to have his agency back off. A shocking number of sophisticated businessmen believe this is the way the government works. You must persuade them that this is quickest path to self destruction. Even the most innocent approach along these "charm" lines will make most government officials more adamant in their positions against your client." Charles M. Carberry, "Other Snoops: Congress, the Press, Plaintiff's Lawyers, Insurers, and the SEC," in How to Handle Internal Investigations and Establish Successful Compliance Programs, (Practising Law Institute #763 1992), at page 263.
- K. Avoid the tendency to take the investigation personally and get angry. Must simultaneously deploy a team to get your arms around: (1) what the government knows and what they don't know; (2) what options, if any, you have left, and (3) what the company's objectives and corporate culture is; some have a 'scorched earth' strategy which must be

overcome; others have principle in it and will refuse to compromise their points. By the time a case gets this far, it is usually emotionally charged and pretty intense; one function that needs to get in place is an effective channel of sincere and trusted communications; find out what Customs really wants and really suspects, as soon as possible.

- L. Offers in Compromise (sample included in Attachment 6). Not too early, but once it is clear that there will be a claim coming out (perhaps even before a pre-penalty) consider making an offer in compromise. This is a provision in the law that allows Customs to accept a cash payment in "settlement" of the claims.
 - 1. Cash must accompany the offer. If the offer is rejected, the law provides that the funds will be returned.
 - 2. Think global when you make an offer.
 - 3. Don't try it too early.
 - 4. Be aware that Customs is increasingly favoring this approach.

Attachments - Sample Documents & Other Information

1. Sample CF 28 (Request for Information)
2. Sample CF 29 (Notice of Action)
3. Sample Administrative Summons
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5. Sample Letter Initiating an Investigation
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7. Summary of Mod Act Investigation Standards

Attachment 1. Sample CF 28

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Approved through 01/31/98. OMB No. 1515-0088.
See back of form for Paperwork Reduction Act Notice.

REQUEST FOR INFORMATION

(General Information/Instructions on reverse)

19 CFR 151.11

3. MANUFACTURER/SELLER/SHIPPER

4. CARRIER

1. DATE OF REQUEST

2. DATE OF ENTRY AND IMPORTATION

6. ENTRY NO.

6A. INVOICE DESCRIPTION OF MERCHANDISE

6B. INVOICE NO.

7. HTSUS ITEM NO.

8. COUNTRY OF ORIGIN/EXPORTATION

9. CUSTOMS BROKER AND REFERENCE OR FILE NO.

10. TO:

11. FROM:

PRODUCTION OF DOCUMENTS AND/OR INFORMATION REQUIRED BY LAW: If you have provided the information requested on this form to U.S. Customs at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.

A. PORT

8. DATE INFORMATION FURNISHED

12. PLEASE ANSWER INDICATED QUESTION(S)

13. PLEASE FURNISH INDICATED ITEM(S)

- A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise.
- B. Identify and give details of any additional costs/expenses incurred in this transaction, such as:
- (1) packing
 - (2) commissions
 - (3) proceeds that accrue to the seller (see reverse)
 - (4) assists (see reverse)
 - (5) royalties and/or license fees (see reverse)

- A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto.
- B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates.
- C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article.
- D. Submit samples:
Article no. and description _____
from container no. _____
mark(s) and no. _____
Samples consumed in analysis, and other samples whose return is not specifically requested, will not normally be returned.
- E. See item 14 below.

14. CUSTOMS OFFICER MESSAGE

15. REPLY MESSAGE (Please print or type. Use additional sheets if more space is needed.)

16. CERTIFICATION It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)

I hereby certify that the information furnished herein or upon this form in response to this inquiry is true and correct, and that any samples provided were taken from the shipment covered by this entry.

A. NAME AND TITLE/POSITION OF SIGNER (Owner, Importer, or Corporate/Company Official—Print or Type)

B. SIGNATURE

C. TELEPHONE NO.

D. DATE

17. CUSTOMS OFFICER (Print or Type)

18. TEAM DESIGNATION

19. TELEPHONE NO.

ORIGINAL

Customs Form 28 (030195)

GENERAL INFORMATION AND INSTRUCTIONS

1. The requested information is necessary for proper classification and/or appraisal of your merchandise and/or for insuring import compliance of such merchandise. Your reply is required in accordance with section 509(a), Tariff Act of 1930, as amended (19 U.S.C. 1509).
2. All information, documents, and samples requested must relate to the shipment of merchandise described on the front of this form.
3. Please answer all indicated questions to the best of your knowledge.
4. All information submitted will be treated confidentially.
5. If a reply cannot be made within 30 days from the date of this request or if you wish to discuss any of the questions designated for your reply, please contact the Customs officer whose name appears on the front of this form.
6. Return a copy of this form with your reply.

DEFINITIONS OF KEY WORDS IN BLOCK 12.

Question A: RELATED--The persons specified below shall be treated as persons who are related:

- (A) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.
- (D) Partners.
- (E) Employer and employee.
- (F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (G) Two or more persons directly or indirectly controlling, controlled by or under common control with, any person.

PRICE PAID OR PAYABLE--This term is defined as the total payment (whether direct or indirect and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and other C.I.F. charges) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Question B: ASSISTS--The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of the imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

- (1) Materials, components, parts, and similar items incorporated in the imported merchandise.
- (2) Tools, dies, molds, and similar items used in the production of the imported merchandise.
- (3) Merchandise consumed in the production of the imported merchandise.
- (4) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

PROCEEDS THAT ACCRUE TO THE SELLER--This term is defined as the amount of any subsequent resale, disposal, or use of the imported merchandise that accrues, directly or indirectly, to the seller.

ROYALTIES AND/OR LICENSE FEES--This term relates to those amounts that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States.

PAPERWORK REDUCTION ACT NOTICE: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you have to give it to us. We ask for the information to carry out the laws of the United States. We need it to ensure importers/brokers are complying with these laws and to allow us to properly appraise and classify imported merchandise or correct duties and determine import admissibility, where appropriate. Your response is mandatory.

Statement Required by 5 CFR 1320.21: The estimated average burden associated with this collection of information is 33 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington DC 20229. **DO NOT send completed form(s) to this office.**

Customs Form 28 (030195)(Back)

Attachment 2. Sample CF 29

DEPARTMENT OF THE TREASURY
 UNITED STATES CUSTOMS SERVICE
 19 CFR 152.2

NOTICE OF ACTION
This is NOT a Notice of Liquidation

1. DATE OF THIS NOTICE		
2. CARRIER	3. DATE OF IMPORTATION	4. DATE OF ENTRY
5. ENTRY NO.		
6. IMPORTER/SELLER/SHIPPER	7. COUNTRY	8. CUSTOMS BROKER AND FILE NO.
9. DESCRIPTION OF MERCHANDISE		
10. TO		11. FROM

12. THE FOLLOWING ACTION, WHICH WILL RESULT IN AN INCREASE IN DUTIES,—

- IS PROPOSED** IF YOU DISAGREE WITH THIS PROPOSED ACTION, PLEASE FURNISH YOUR REASONS IN WRITING TO THIS OFFICE WITHIN 20 DAYS FROM THE DATE OF THIS NOTICE. AFTER 20 DAYS THE ENTRY WILL BE LIQUIDATED AS PROPOSED.
- HAS BEEN TAKEN** THE ENTRY IS IN THE LIQUIDATION PROCESS AND IS NOT AVAILABLE FOR REVIEW IN THIS OFFICE.

TYPE OF ACTION

- A. RATE ADVANCE
- B. VALUE ADVANCE
- C. EXCESS WEIGHT QUANTITY
- D. OTHER (See below)

13. EXPLANATION (Refer to Action letter designations above)

14. CUSTOMS OFFICER (Print or Type)	15. TEAM DESIGNATION	16. TELEPHONE
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Customs Form 29 (031795)

ORIGINAL (WHITE) - IMPORTER

Attachment 3. Sample Administrative Summons

TO

--

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE



SUMMONS NOTICE

section 509(c)(2), Tariff Act of 1930, as amended

REFERENCE

Enclosed is a copy of a Summons served by the United States Customs Service to examine records or to request testimony relating to records of your business transactions or affairs which have been made or kept by the person named in Block 1 of the Summons. If you object to the examination of these records, you may stay (prevent) examination of the records until a summons enforcement proceeding is commenced in court. Compliance with the Summons will be stayed if, not later than the day before the date indicated in Block 2 of the Summons, you advise the person summoned (the person named in Block 1), in writing, not to comply with the Summons, and you send a copy of that notice by registered or certified mail to the officer who issued the Summons at the address shown in Block 6 of the Summons.

The United States Customs Service may begin an action to enforce the Summons in the appropriate United States District Court. In such cases, you will be notified and you will have the right to intervene and present your objections before the court. The court will decide whether the person summoned should be required to comply with the Summons.

If the court issues an order to comply with the Summons and the person summoned fails to comply, the court may punish such failure as a contempt of court. Other sanctions may be provided by law.

If you have any questions regarding this matter, please contact the Customs officer before whom the summoned person is required to appear. The officer's name and telephone number are given in Block 2 of the Summons.

1 TO (Name, Address, City, State, ZIP)

**DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE**

**SUMMONS
TO APPEAR AND/OR PRODUCE RECORDS**

By the service of of this summons upon you, YOU ARE HEREBY SUMMONED AND REQUIRED TO:

- (A) APPEAR before the Customs officer named in Block 2 below at the place, date, and time indicated, to testify and give information.
- (B) PRODUCE the records (including statements, declarations, and other documents) indicated in Block 3 below, before the Customs officer named in Block 2 at the place, date, and time indicated.

Your testimony and/or the production of the indicated records is required in connection with an investigation or inquiry to ascertain the correctness of entries, to determine the liability for duties, taxes, fines, penalties or forfeitures, and/or to insure compliance with the laws or regulations administered by the U.S. Customs Service.

Failure to comply with this summons will render you liable to proceedings in a U.S. District Court to enforce compliance with this summons as well as other sanctions

2 (A) NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF CUSTOMS OFFICER BEFORE WHOM YOU ARE TO APPEAR

(B) DATE

(C) TIME

3 RECORDS REQUIRED TO BE PRODUCED FOR INSPECTION

Issued under authority of section 509, Tariff Act of 1930, as amended by Public Law 95-410 (19 U.S.C. 1509); Customs Delegation Order No. 55 (44 F.R. 2217).

4 NAME OF PERSON AUTHORIZED TO SERVE SUMMONS:

or any other Customs officer.

5 DATE OF ISSUE

COMMISSIONER OF CUSTOMS

BY
(Signature):

6 NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF PERSON ISSUING THIS SUMMONS



If you have any questions regarding this summons, contact the Customs officer identified in Block 2.

Sample Administrative Summons Attachment

Provide copies of any and all records and documentation on any assists, materials, or research and development provided by [foreign seller or importer to Mexican producer] for the manufacture of [merchandise] imported into the United States by [importer] during the period January 1, 1994 through December 31, 1994. Documentation to include, but not limited to: purchase orders and payment records for any material and capital equipment provided for the manufacture of [merchandise] imported into the United States, purchase orders and payment records for any research and development costs undertaken outside of the United States (which specify where it is done and by who), business contracts which relate to the issues of materials, assists, and research and development costs, copies of any documentation showing the payment of royalties with respect to the imported goods, copies of any contracts and/or purchase orders between [foreign seller or importer and Mexican producer] and proof of payment (e.g., letters of credit, canceled checks), copies of any correspondence, memorandum, telexes, notes and any and all other documentation which relates to assists, material, or research and development costs provided by [foreign seller or importer to Mexican producer] for the manufacture of [merchandise] imported into the United States.

Attachment 4. Sample Search Warrant

United States District Court
FOR THE

UNITED STATES OF AMERICA

VS.

Commissioner's Docket No.

Case No.

SEARCH WARRANT

To

Affidavit having been made before me by

that he { has reason to believe } that { on the person of
is positive! } { on the premises known as }

in the

District of

there is now being concealed certain property, namely

here describe property

which are

here give alleged grounds for search and seizure

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the { person } above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the { person } named for the property specified, serving this warrant and making the search { in the daytime } and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this day of , 19

U. S. Commissioner.

1 The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

[reverse]

RETURN

I received the attached search warrant _____, 19____, and have executed it as follows:

On _____, 19____ at _____ o'clock _____ M, I searched { the person / the premises } described in the warrant and

I left a copy of the warrant with _____
name of person searched or owner or "at the place of search"
together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of

and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this _____ day of _____, 19____

U. S. Commissioner.

Attachment 5. Sample Letter Initiating an Investigation

[reverse]
RETURN

I received the attached search warrant _____, 19____, and have executed it as follows:

On _____, 19____ at _____ o'clock M, I searched { the person
the premises } described in the warrant and

I left a copy of the warrant with _____
name of person searched or owner or "at the place of search"
together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of

and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this _____ day of _____, 19____

U. S. Commissioner.



DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: February 22, 1995
FILE:

Chief Executive Officer

Dear Sir:

This is to advise you that on February 15, 1995 the Resident Agent in Charge, , initiated a formal investigation into the importing practices of This office is investigating the alleged undervaluation, by failure to declare assists on imported from Mexico.

Special Agent of this office is the assigned case agent and can be contacted at

Sincerely,

Acting Resident Agent in Charge

REPLY TO: RESIDENT AGENT IN CHARGE, OFFICE OF ENFORCEMENT, P.O. BOX

Attachment 6. Sample Offer Letter (Offer in Compromise)

SAMPLE CIVIL OFFER LANGUAGE

Commissioner of Customs

Attention: Chief, Penalties Branch
Office of Regulations & Rulings
U.S. Customs Service Headquarters
Franklin Court
1301 Constitution Avenue, NW.
Washington, D.C. 20229

Dear Sir:

(Company/individual name) hereby offers pursuant to title 19, United States Code section 1617, the sum of (\$), (\$x dollars representing penalties and x dollars representing duties), in full and complete settlement of all Customs civil claims and potential Customs civil claims with respect to those entries and issues covered by _____ (Name of Customs Port) Case No.

(Optional second paragraph)

In submitting this offer, (Company/individual name) does not admit any wrongdoing or malfeasance with regard to the subject entries.

(Signature)

Attachment 7. Mod Act Summary of "Investigation"

Under certain circumstances, a company may mitigate penalties by disclosing violations, but to do so, it must disclose before or without knowledge of the commencement of a formal investigation. The point of commencement, however, differs depending on the circumstances. For purposes of marking the time by which a prior disclosure must be made, an investigation begins:

- In the case of a referral by an import specialist or other Customs officer of a matter involving the disclosing party and the disclosed information for investigation of a possible violation of 19 U.S.C. 1592, the date recorded in writing as the date on which the matter was referred to the Office of Investigations;
- In the case of a referral by an import specialist or other Customs officer of a request for value, classification or other technical violations, on the date recorded in writing by an investigating agent in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 1592 existed with respect to the disclosing party and the disclosed information;
- In the case of an investigation prompted by an individual other than a Customs officer with regard to the disclosing party and the disclosed information, on the date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which the information was received.

In all other cases, on the earliest of the following:

- 21 -

November 1998

- The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;
- The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation;
- The date on which an investigating agent, having properly identified himself and the nature of the inquiry, requested specific books and records of the person relating to the disclosed information.

As to additional violations (outside the scope of the original investigation but committed by the same party) on the earliest of the following:

- The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the additional violations;
- The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of additional violations; or

- The date on which an investigating agent, having properly identified himself and the nature of his inquiry requested specific books and records of the person relating to the additional violations.