

## You've Got Mail!

By John D. Goodrich

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I like getting mail, especially the kind that comes in an envelope with a stamp on it. It often contains a greeting card or perhaps news from an older relative who hasn't yet yielded to the inter-web of things. Don't get me wrong. Email is just fine. It just doesn't have the same sort of *je ne sais quoi* of a good old-fashioned letter. It's also pretty obvious that when you get an email birthday greeting, it doesn't contain a crisp \$20 bill for you from Aunt Edna.

There is some mail I don't like to receive. Those are letters sent to me from Customs and Border Protection. Nothing personal CBP, but you don't usually send happy birthday greetings. Usually your letters portend ominous Customs business.

And so it has been recently for the import trade community. Since last summer, CBP has been sending out informed compliance letters. A version of such a letter is appended to this article.

The letter begins in a matter-of-fact, officious tone outlining your company's primary import classifications and the value of your import program. It continues in this manner letting you know that CBP is simply doing its job informing you of your regulatory responsibilities. On the second page the letter adopts a more earnest voice that soon turns to reminders, nay threats, of what could happen to your company should its import program be found lacking. The language becomes more paternalistic as it "strongly encourages" you to monitor your transactional data through the ACE portal. It then requests a favour of you to acknowledge the receipt and understanding of the letter. Graciously CBP includes a generous gift of a DVD containing additional CBP informed compliance publications.

Have you received this letter? If you have, you probably had a few immediate questions;

- Why us?
- What's wrong?
- What should do now?

### Why Us?

In the past year, CBP saw a slew of regulatory and resources changes. They received additional authority and funding from Congress to investigate anti-dumping and countervailing duty evasion. Congress also directed CBP to focus on a range of additional priority trade issues. CBP has also completed and implemented the commercial import functions within the Automated Commercial Environment or "ACE". Finally, CBP successfully reorganized its commercial operations into the Centers of Excellence and Expertise or "CEEs".

This convergence of enhanced authority, increased resources and realigned personnel represents a perfect storm that allows CBP to evaluate and target commercial importers and data like never before. In a way, CBP now has x-ray vision and is using it to focus on its commercial import trade enforcement role. One of the ways CBP has been exercising its new super powers is by issuing these informed compliance letters.

### What's Wrong?

Perhaps nothing is wrong. Perhaps this letter is merely CBP flexing its muscle and reminding you of its authority. But as the letter lays out, do you know that? Have you been monitoring you ACE portal? Have you identified your import strengths and risks? Have you been exercising reasonable care through implementation of controls and oversight? Is your import program truly compliant?

### What Should We Do Now?

Take this letter seriously. Understand that, using its enhanced capability, CBP can now see data across import supply chains. They can see if your company is classifying and valuing goods from a vendor differently than another importer purchasing from that same vendor. Assume, based on their data analysis that your company is on the short list for a [focused assessment or a quick response audit](#) or some variation

of an audit. That means that you should undergo a self-assessment sooner rather than later. If you aren't prepared to do this on your own, I can recommend a good consultant. (See the by-line to this article.)

If you find errors, report them. Either through prior disclosure or post summary correction, make the appropriate corrections and tender any duties or fees you should have paid the first time around. Remember, the prior disclosure process is one method of exercising reasonable care. CBP's policy views disclosure as a mitigating factor and usually chooses not to pursue additional fines or penalties against the importer making the disclosure.

If you haven't implemented a formal trade compliance program, this is the time to do so.

- Establish procedures
- Implement controls
- Create your policy and procedure manual and
- Hold corporate awareness training sessions. (Again, I know a guy.)

Seek counsel. Whether you discover reportable issues or not, consider if or how you respond to CBP's informed compliance letter. Some attorneys recommend acknowledging receipt of the letter. Others suggest that by doing so you are exposing your company to enforcement risk.

### **Whew! Thankfully We Didn't Get a Letter**

Thankfully your company didn't get a letter. Are you sure? CBP mails letters to the address they have on file. Frequently that is your corporate name and headquarters address. If your mailing address has changed or you work for a larger company, there is a possibility the letter never got to your desk. As far as CBP is concerned, they have informed you and you are playing coy by not responding.

There is a way to fix this. You can update your corporate contact information to include an internal mail stop or department name. This is accomplished by [submitting CBP form 5106](#). If you're not comfortable with this form, your bonding agent or your broker could do it on your behalf.

And if you're feeling left out about not getting a letter, there might just be one with your name on it in the mail.



**U.S. Customs and  
Border Protection**

Director Trade Compliance

Subject: Distribution of Informed Compliance Publications and Other Informative Documents

Dear

Our analysis of \_\_\_\_\_ importations under the Importer of Record Number (IOR) \_\_\_\_\_ during the period January 1, 2015 through December 31, 2015 show that the top imported commodities fall under Harmonized Tariff Schedule (HTS) \_\_\_\_\_ with an entered values of \_\_\_\_\_ respectively representing \_\_\_\_\_ percent of the total entered value of \$ \_\_\_\_\_ for calendar year 2015.

As part of Customs and Border Protection's (CBP) responsibility for informed compliance under the Customs Modernization Act, under Title VI of the North American Free Trade Agreement Implementation Act (Public Law 103-182) the MOD Act, we are providing information to assist in taking steps to ensure future compliance.

Additionally, we are enclosing a DVD of selected CBP informed compliance publications to assist \_\_\_\_\_ in understanding CBP's laws and regulations. These and other informed compliance publications may be found on CBP's web site <http://www.cbp.gov/trade/rulings/informed-compliance-publications>.

**Informed Compliance Publications:**

- Customs Value
- Tariff Classification
- Reasonable Care
- Recordkeeping
- Entry
- Bona Fide Sales & Sales for Exportation to the United States
- U.S. Customs and Border Protection Rulings Program
- ABC's of Prior Disclosure
- Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures and Liquidated Damages
- Mitigation Guidelines: Fines, Penalties, Forfeitures and Liquidated Damages
- Customs Valuation Encyclopedia (1980 – 2010)
- Proper Deductions for Freight and Other Costs

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- Buying and Selling Commissions
- Rules of Origin
- Terminology and Methods for Marking of Country of Origin on U.S. Imports

United States Code and/or Code of Federal Regulations:

- Title 19 United States Code (U.S.C.) § 1592(c)(4)
- Title 19 Code of Federal Regulations (C.F.R.) § 162.74 - Prior Disclosure

Be advised that 19 U.S.C. § 1592(c)(4) does not require a party (e.g., importer) to make a prior disclosure. Rather, importers may *elect* to submit a disclosure. When a complete disclosure of a violation is presented to CBP before or without knowledge of a formal CBP investigation of the violation, there may be reduced penalties.

For instance, the penalty may be zero if the importations involve unliquidated (i.e., open) CBP entries and no fraud is involved. If the entries are liquidated (i.e., closed or finalized) and no fraud is involved, the penalty may be the interest accrued on the loss of duties. Additional information on prior disclosure is available under 19 C.F.R. § 162.74 and the ABC's of Prior Disclosure which have been provided.

We strongly encourage \_\_\_\_\_ to proactively monitor its transactional data in the ACE Secure Data Portal and evaluate whether there are any significant errors/discrepancies that should be voluntarily reported to CBP. Additionally, we encourage companies to conduct self-reviews of their systems used to make declarations to CBP, and take appropriate action to correct the issues and submit loss of revenue (duties, fees, taxes, etc.) in accordance with the appropriate laws and regulations, based on the liquidation status of the entries/transactions at issue.

ACE portal account users have access to view their account information and transactional data, which can be used to identify and evaluate compliance issues and monitor daily operations. For further information about ACE please visit CBP's website:  
<http://www.cbp.gov/trade/automated>."

Because \_\_\_\_\_ has been provided this information, violations that may occur in the future could result in seizure and forfeiture of imported merchandise and/or the assessment of monetary penalties.

We request that you acknowledge receipt of the information listed above by signing in the signature block below and returning the signed letter to our office by one of these means: 1) in the form of a pdf file via email to \_\_\_\_\_; 2) by facsimile to \_\_\_\_\_; or 3) by mail to the following address:

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U.S. Customs and Border Protection  
Office of Regulatory Audit  
Office of Trade

If there are any questions or representatives would like to schedule a meeting with us,  
please contact by telephone at  
or by email to \_\_\_\_\_

Sincerely,

Office of Regulatory Audit  
Office of Trade

Enclosures:  
As described above

**Signature of Responsible Official Acknowledging Receipt of the Items Listed Above:**

\_\_\_\_\_  
Signature                      Printed Name                      Title                      Date