

JAN 16 2014



Homeland Security

Memorandum

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
U.S. Customs and Border Protection

SPECIAL AGENTS IN CHARGE
U.S. Immigration and Customs Enforcement

FROM: Acting Assistant Commissioner (b) (6), (b) (7)(C)
Office of Field Operations
U.S. Customs and Border Protection

Acting Assistant Commissioner (b) (6), (b) (7)(C)
Office of International Trade
U.S. Customs and Border Protection

Executive Associate Director (b) (6), (b) (7)(C)
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

SUBJECT: 2014 Commercial Enforcement Analysis Response Process
Standard Operating Procedures

In September 2011, U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and U.S. Customs and Border Protection (CBP) convened a joint Commercial Fraud Working Group (CFWG) at the National Intellectual Property Rights Coordination Center for the purpose of enhancing commercial trade enforcement. The CFWG closely examined the trade fraud enforcement process, identified obstacles to optimal enforcement, and offered recommendations for improvement. A focus area identified for improvement was the Commercial Enforcement Analysis and Response (CEAR) process. To that end, the CFWG reconvened a smaller CEAR sub-working group (CEAR SWG) to develop a plan for updating the CEAR process resulting in the 2014 CEAR Standard Operating Procedures (SOP).

The intent of the CEAR process is to: (1) ensure coordination between CBP and HSI when violations are detected; (2) make an early determination of the nature, extent, and impact of the violation; (3) agree upon the response best suited to remedy the problem; and (4) follow-up on the action to ensure resolution. This process establishes and fosters communication and collaboration between CBP and HSI from the earliest possible point through the conclusion of the enforcement action.

The revised CEAR SOP encourages agile coordination, immediate communication, and local specialization. We are pleased to announce the results of this joint agency effort, which will serve as a guide in the coordination of commercial fraud enforcement activities. These enhanced procedures will augment joint investigations resulting in the protection of revenue, stronger penalties, seizures, and increased arrests and convictions.

Questions regarding the CEAR process may be directed to (b) (6), (b) (7)(C) Director, Commercial Fraud Division, Office of International Trade, CBP, at (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) Unit Chief, Commercial Fraud, National IPR Coordination Center, ICE-HSI, at (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C)@ice.dhs.gov.

Attachment



Commercial Enforcement Analysis and Response

Standard Operating Procedures

Commercial Enforcement Analysis and Response Process
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OBJECTIVES

The objective of the Commercial Enforcement Analysis and Response (CEAR) process is to enhance the U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) commercial enforcement programs through:

- 1) Effectively prioritizing commercial enforcement issues and allocating resources;
- 2) Properly determining and evaluating suitable commercial enforcement responses; and
- 3) Monitoring the status of all commercial enforcement referrals made through the CEAR process.

The dedication and diligence of all CBP and HSI personnel will be required to accomplish these objectives successfully. CBP and HSI created this guide in partnership to ensure complete cooperation in the common goals of combating commercial fraud and effective enforcement of all Federal trade laws, rules, regulations, and agreements.

COMMERCIAL ENFORCEMENT ANALYSIS AND RESPONSE

CBP and HSI have traditionally responded to commercial violations with enforcement action. When enforcement action is warranted, the impact level of the violation and the type of action required will determine the appropriate enforcement response.

The intent of the CEAR process is to: (1) ensure coordination between CBP and HSI when violations are detected; (2) make an early determination of the nature, extent and impact of the violation; (3) agree upon the response best suited to remedy the problem; and 4) follow-up on the action to ensure the problem is solved. This process establishes and fosters communication and collaboration between CBP and HSI from the earliest possible point through the conclusion of the enforcement action. The revised overall procedures will enhance joint investigations, provide greater protection of the revenue of the United States, improve Antidumping and Countervailing Duty (AD/CVD) collection and enforcement, support health and safety enforcement, result in stronger and more developed penalty actions, protect intellectual property rights, and increase seizures, arrests and convictions for violations of the customs laws.

Joint oversight of the CEAR process by the Assistant Port Director, Trade (APD), and the HSI Supervisor, ensures that significant commercial violations will receive priority by both CBP and

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HSI. Joint oversight of the CEAR process also ensures significant violations will be processed
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CEAR meetings will be held monthly for the purpose of determining courses of action on significant commercial violations and to conduct follow up on existing and ongoing actions.

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CEAR decision-makers are the APD Trade, the HSI Supervisor, and the FPFO. Attendance at the CEAR meeting is mandatory for decision-makers; however in the case that a designee is assigned, the attending designees must have sufficient delegated authority to make decisions on behalf of the offices they represent.

CEAR participants are a multi-disciplinary group selected from the service port and the local HSI office and include Import Specialists (IS), Entry Specialists (ES), Fines, Penalties, and Forfeitures personnel (FP&F), CBP Officers, Associate/Assistant Chief Counsel, National Account Managers (NAM), International Trade Specialists (ITS), Auditors, Field Analysis Specialists (FAS) and HSI personnel involved in the referral of a violation or allegation.

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ROLES AND RESPONSIBILITIES

The following section highlights the roles and responsibilities of personnel involved in the CEAR process.

Director, Field Operations

Directors, Field Operations (DFOs) will ensure proper implementation and CBP oversight of the CEAR process, and will assign a staff member as the Field Office (FO) CEAR Coordinator.

Special Agent in Charge

Special Agents in Charge (SAC) will ensure proper implementation and HSI oversight of the CEAR process. The SAC will designate an HSI supervisor to represent HSI in the CEAR process. The SAC designee should be authorized to make decisions for the entire SAC Area of Responsibility (AOR).

Field Office CEAR Coordinators

The FO CEAR Coordinator is responsible for overseeing the CEAR process within the DFO's AOR. The FO CEAR Coordinator will review local CEAR meeting minutes and will coordinate issues related to the CEAR process.

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The FO CEAR Coordinator will forward local CEAR monthly meeting minutes to the Strategic Enforcement Branch, Commercial Fraud Division, Commercial Targeting and Enforcement within the CBP HQ Office of International Trade (OT). This will be accomplished by posting the minutes to the documents section of the

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FO CEAR Coordinators will ensure that the issues addressed through the CEAR process are reviewed, researched, and coordinated with other impacted ports. When necessary, the FO

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CEAR Coordinator will make cross-port referrals and assist their counterparts with coordination of the referral to ensure uniformity. FO CEAR Coordinators should require justification from ports for missed monthly CEAR meetings.

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Port Directors

Port Directors (PDs) are responsible for ensuring that the local CEAR process is established and operational and will ensure that the Trade Enforcement Coordinator (TEC) provides the monthly CEAR minutes to the FO CEAR Coordinator. They are also responsible for providing the APD with the necessary resources to carry out their responsibilities and provide oversight to the overall enforcement process within the service ports. PDs will determine if the Office of Field Operations (OFO) resources are available to pursue a given course of action with respect to potential violations.

Assistant Port Directors, Trade

APDs are responsible for the oversight of the CEAR process and for designating appropriate participants, which includes appointing the TEC, overseeing the CEAR meetings and approving all courses of action, with the exception of investigations. In addition to ensuring training related to the CEAR process is provided to port personnel, APDs will ensure that directives and information related to the CEAR process are made available to individuals involved with commercial enforcement within their ports. APDs will provide written justification to the PD when monthly CEAR meetings are not held.

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Trade Enforcement Coordinators (TECs)

The TEC position is a collateral duty that should be assigned to a CBP supervisory level employee. In order to remain objective in the CEAR process, the TEC position should not be assigned to a CEAR decision maker, i.e. FPFO or APD. The TEC serves as a liaison among the various components of the CEAR group for the purpose of:

- establishing the CEAR meeting agenda and providing it to attendees at least five days prior to the meeting;

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- producing reports/minutes of the monthly CEAR meeting;
- distributing the meeting minutes to the CEAR members for review prior to forwarding to the PD; and
- submitting meeting minutes to their FO CEAR Coordinator within two weeks after the monthly CEAR meeting.

TECs are the central point of contact for referral, research, and coordination of significant commercial violations with other ports, components within CBP and HSI.

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TECs should apprise the Centers of Excellence and Expertise (CEE) of any potential enforcement actions against, or suspected violations involving a trusted partner, unless HSI has determined that it will investigate the trusted partner. In those instances, the decision to notify the CEE will be HSI's responsibility.

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the Trade Integration Report (TIR) database folder at the following URL:

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Supervisors, Homeland Security Investigations

HSI Supervisors **(b) (7)(E)** for investigative purposes or providing other assistance that may be necessary for both criminal and civil matters. The HSI Supervisor will assist other participants in the CEAR process in evaluating commercial violations and will recommend and make decisions on courses of action.

Fraud Investigations Coordinators

The HSI Supervisor can appoint a Fraud Investigations Coordinator (FIC), who will be responsible for coordinating issues between HSI and OFO. The FIC is the point of contact for coordination between the TEC and special agents involved in investigating a commercial violation. The FIC is responsible for referring significant enforcement issues, as agreed upon by the CEAR, to the HSI Supervisor for possible investigation. The FIC is responsible for coordinating with his/her respective supervisor regarding the status of referrals from the CEAR process.

CBP and HSI Offices Without Co-Located Service Ports

PDs and Resident Agents in Charge (RAC) in locations without a co-located service port will implement procedures to ensure that all trade compliance/fraud issues are referred to their supporting service port TEC for appropriate evaluation and course of action determination. RACs in locations without a co-located service port will attend the meeting or designate a supervisor, as appropriate, to attend CEAR meetings.

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IMPORTANT NOTE: TECS will remain the official referral mechanism from CBP to HSI.
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Local Core Response Team

The local core response team is comprised of designated HSI and CBP personnel assigned to work a specific issue. The TEC and HSI Supervisor or FIC will coordinate for an immediate response to discovered violations and designate inter-agency representatives for the local core response team to further research the possible violation.

Regulatory Audit Field Directors

As a participant of the CEAR process, the Regulatory Audit (RA) Field Director, or his/her designee, is responsible for assessing the impact of the commercial violation and determining the appropriate response when a referral has been made to RA by the CEAR group. Additionally, the RA Field Director or designee should determine if audit resources are warranted for review of the particular violation.

RA Field Directors should refer audit findings **(b) (7)(E)**
the CEAR group. The RA Field Director or designee should present the facts and circumstances of the audit findings to the CEAR group and, if necessary, present documentation to support the violation. The RA Field Director or designee should also clearly communicate the audit recommendations, both monetary and non-monetary, and the requested action to be taken by the CEAR group. **(b) (7)(E)**

In the event that an issue remains unresolved with the CEAR group for 90 days, the RA Field Director will notify the RA Operations Director for the issue to be forwarded to the HQ CEAR Board for resolution through the FO CEAR Coordinator.

Regulatory Auditors

Regulatory Auditors are responsible for developing information on significant commercial violations. **(b) (7)(E)** an audit will be forwarded to the TEC at the local port through the RA Field Director, upon the completion of each audit risk area (e.g. classification, value, etc). However, if during an audit, Regulatory Auditors detect potential fraud or other egregious wrongdoing, the RA Field Director or designee should notify the TEC and enter the circumstances of the potential violation(s) as a **(b) (7)(E)** into **(b) (7)(E)**

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Centers of Excellence and Expertise

Centers of Excellence and Expertise (CEE) will process certain operational transactions for trusted partners. Trusted partners are those importers identified by the CEE and are participants in the Importer Self Assessment (ISA) program and Tier 2 or 3 Customs Trade Partnership Against Terrorism (C-TPAT) member. The ports will maintain responsibility for all examination and enforcement actions. The CEEs will monitor **(b) (7)(E)** and coordinate with trusted partners to address violations and ensure the trusted partners are actively working to improve compliance. CEE staff should participate in local CEAR meetings when a trusted partner will be discussed. When commercial violations are identified by the CEEs, they must refer the issue to the TEC for possible enforcement action.

National Account Managers

NAMs develop comprehensive strategies to manage risk of assigned accounts and can be expected to implement and track account-based courses of actions initiated by the CEAR process. As such, NAMs should be included in the CEAR process if the potential violation involves one of the accounts for which they are responsible. NAMs make referrals to the TECs and serve as a permanent source of information for the participants in the CEAR process for information pertaining to accounts for which they are responsible. NAMs must ensure their accounts are actively working to improve compliance. Significant commercial violations discovered by a NAM should be referred to the TEC for possible enforcement action. An account's continued resistance to taking corrective actions with respect to its import operations is an example of a situation which may warrant referral to the TEC.

Field Analysis Specialists

Field Analysis Specialists (FAS) are responsible for issues that require extensive research for high priority violations. Requests should be made by the TEC through the established protocols to their local FAS for further research. Additionally, the FAS may be required to input local entry summary and/or cargo rule sets if directed to do so by the local CEAR group.

International Trade Specialists

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process to provide industry information for commercial violations within each PTI. Additionally, the ITS can provide extensive research and analysis for a particular violation.

Fines, Penalty and Forfeiture Officers

FPFOs are decision makers in the CEAR process. FPFOs are also a resource in the CEAR process and will provide guidance on policies and procedures for civil fraud investigations,

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seizures, detentions, etc. It is the responsibility of the FPFO to advise the TECs and participants in the CEAR process of the penalty mitigation guidelines. The FPFO is responsible for requesting Statute of Limitation Waivers and monitoring the Statute of Limitations Waivers for cases referred to FPFO for action.

Laboratories and Scientific Services

Laboratories and Scientific Services (LSS) is the forensic/scientific arm of CBP providing forensic and scientific testing for trade enforcement matters. LSS is responsible for performing the required analytical and verification testing on samples of suspect commodity shipments. Test results are entered into the Laboratory Information Network (LIN).

Discovering Officer

The discovering officer is the CBP employee or HSI agent who identifies the commercial violation. The discovering officer is responsible for documenting the findings in sufficient detail to allow analysis, scoping, and decision-making by CEAR participants. Discovering officers

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Upon discovery of a commercial violation, the CBP discovering officer is responsible for ensuring the recording and the reporting of the issue in the appropriate system of records

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The discovering officer serves as a resource in the

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CEAR process concerning the specific information involving the possible commercial violation and should attend the CEAR meetings where the referral will be discussed.

Office of Chief Counsel, CBP and the Office of the Principal Legal Advisor, HSI

Local field counsel from the Office of Associate/Assistant Chief Counsel, CBP, and OPLA, HSI, will attend CEAR meetings to assist with any legal issues that may arise during the CEAR meetings regarding a particular case.

Headquarters

OT, OFO, and HQ HSI CEAR program manager have the responsibility for monitoring, evaluating, modifying and enforcing the CEAR program, and will be involved in dispute resolution and problem solving elevated from field CEAR groups.

Monthly meetings are held by the HQ CEAR Board group, which is chaired by the Director, Commercial Fraud Division. The HQ CEAR group is comprised of representatives from OT, OFO, LSS, OCC, OPLA and HSI.

The OT, Commercial Targeting and Enforcement will conduct quarterly FO/TEC conference calls to discuss national policy and current issues raised by FOs and port personnel, pertaining to enforcement policy and to CEAR policy/procedural issues.

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7. *General Guidelines for the local CEAR Group Meeting*

The local CEAR Group participants will meet monthly to review violations and to make decisions on the courses of action for CEAR referrals. The local CEAR Group will be comprised of decision-making members and advisory members. An agenda for the meeting should be issued a minimum of five business days prior to the meeting to all local CEAR Group participants. The agenda should include a list of new cases in the first section, along with a brief summary of each new listed case (e.g. issue and case significance, COMOIR number, and other related information such as entity enforcement record, existing enforcement actions, etc.). The agenda should also include updates to previously-presented cases.

When a significant commercial fraud violation is detected by CBP, the TEC or appropriate CBP designee will notify HSI for immediate coordination, rather than wait to refer it at the next monthly CEAR meeting.

Local CEAR Group Mandatory Members

The following local CEAR Group members, with decision making authority, must attend the meeting: APD Trade; the HSI Group Supervisor responsible for commercial fraud, and the FPFO. If a member is unable to attend, he/she must assign an appropriate designee with decision making authority to attend the meeting. The designees should be noted clearly as such on the monthly CEAR meeting minutes.

Local CEAR Group Advisory Members

Advisory local CEAR Group members should include: the Discovering Officer; TEC; HSI Special Agents; Import Specialists; Supervisory Import Specialists; Entry Specialists; Supervisory Entry Officers; NAMs; CEEs; Regulatory Audit Field Directors; Regulatory Auditors; International Trade Specialists; CBP field counsel from the local Associate/Assistant Chief Counsel Offices; and ICE field counsel from the local OPLA Office of Chief Counsel.

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Other participants may be included for individual case presentations, as necessary (e.g. local Assistant U.S. Attorney, FAS, and other agency personnel).

8. *Presenting Commercial Violations to the local CEAR Group and Determining Course of Action*

The violation, accompanied by the analysis, is presented at the meeting for a determination of an appropriate course of action **(b) (7)(E)**

The goal of a recommended course of action should be to take appropriate enforcement action in response to the instant commercial violation and to prevent future violations. The decision makers should be flexible and select the course of action that best meets these goals. The decision makers should strive to implement courses of action that can be uniformly implemented at all impacted ports, and will determine the appropriate office/port/person to implement the action. When determining the course of actions, the CEAR group should take into account existing requirements and procedures related to trusted partners and partnership program members, such as C-TPAT, ISA, and CEE members.

Possible courses of action may include:

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9. *CEAR Meeting Minutes*

Following the local CEAR Group meeting, the TEC shall provide meeting minutes to the local CEAR Group members with decision making authority, HSI, and the TEC's FO CEAR Coordinator within two weeks following the meeting. (See Attachment 3 for required format for the CEAR meeting minutes).

10. *Local CEAR Group Meeting Action Tracking*

The TEC will track the course of action to ensure its effectiveness. The TEC will also coordinate updates on existing cases for future CEAR meetings.

If the HSI Supervisor determines that investigative action is warranted, he/she is responsible for ensuring that the appropriate investigative action is taken. Appropriate feedback on the investigative activities should be provided in a timely manner by HSI to the TEC. In cases involving sensitive investigative issues, feedback may be limited in order to preserve the security of the investigation (*Note*: In cases in which sensitive investigative issues are involved, HSI may insist that only the decision makers are present at the CEAR meeting, as well as local counsel).

Should HSI determine that HSI involvement is not warranted (investigation is declined or closed without action by HSI), the information should be returned to the TEC as quickly as possible for administrative handling by CBP or other action as appropriate. CBP may wish to continue to review the matter to obtain further information to support a civil enforcement action, including requesting additional information from the importer or broker, or issuing a customs summons.

In the event that an enforcement action remains unresolved, or there is a disagreement as to the appropriate course of action within the local CEAR group which cannot be resolved within 90 days from the date of referral to a particular CBP office for information or action, the FO CEAR Coordinator will refer the issue for resolution to the Headquarters (HQ) CEAR Board.

Following the enforcement action, the local CEAR group should perform a post enforcement action analysis to determine if the course of action taken was effective. This should include:

- Final disposition of case
- Amount of revenue collected
- Was the outcome successful – why or why not?
- Lessons learned
- Is follow-up required? If so, what is required and who is responsible?
- Improvements to the process

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- Provide feedback to all parties involved

This information is to be used to close the Enforcement Tracking record in (b) (7)(E). It is the job of the TEC or a designated supervisory “Approver” to update, close, or approve all records in (b) (7)(E) that are within his or her AOR. The Trade Enforcement Case Summary (Attachment 5) can be used to recap an enforcement action record.

11. Headquarters Oversight and Feedback to Field Offices

A HQ CEAR Board meeting will be held the third Thursday of each month. This meeting will be chaired by the Director, Commercial Fraud. Members of the HQ CEAR Board include representatives from the Commercial Targeting Division, RR, OFO, OCC, HSI, and OPLA. Participants of the HQ CEAR Board include representatives from the Office of Information Technology and Regulatory Audit. This Board discusses current and future enforcement activities and addresses issues elevated from local CEAR groups for resolution.

The Commercial Fraud Division, Strategic Enforcement Branch will provide feedback and additional CEAR training to the field, when necessary. Any new or modified CEAR policies will be provided to the field as they are made available.

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ATTACHMENT 3

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Brief descriptions of **new** significant commercial violations discussed, actions requested, and decisions made, list course of action taken and appropriate office assigned (Do not include any case sensitive information):

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ATTACHMENT 4

Acronyms

| | |
|------------|--|
| ACC | Associate or Assistant Chief Counsel |
| ACS | Automated Commercial System |
| APD | Assistant Port Director |
| AM | Account Managers |
| (b) (7)(E) | (b) (7)(E) |
| CBP | U.S. Customs and Border Protection |
| CBPO | U.S. Customs and Border Protection Officer |
| CEE | Centers of Excellence and Expertise |
| CEAR | Commercial Enforcement Analysis and Response |
| (b) (7)(E) | (b) (7)(E) |
| (b) (7)(E) | (b) (7)(E) |
| C-TPAT | Customs Trade Partnership Against Terrorism |
| (b) (7)(E) | (b) (7)(E) |
| DFO | Director, Field Operations |
| FAS | Field Analysis Specialists |
| FIC | Fraud Investigations Coordinator |
| FP&F | Fines, Penalties and Forfeiture |
| FPFO | Fines, Penalties and Forfeiture Officer |
| FO | Field Office |
| HQ | Headquarters |
| HSI | Homeland Security Investigations |
| IS | Import Specialist |
| ISA | Importer Self Assessment |
| ITS | International Trade Specialist |
| LIN | Laboratory Information Network |
| LSS | Laboratories and Scientific Services |
| NAM | National Account Manager |
| | (b) (7)(E) |
| OCC | Office of Chief Counsel |
| OFO | Office of Field Operations |
| OPLA | Office of the Principal Legal Advisor |
| OT | Office of International Trade |
| PD | Port Director |
| PTI | Priority Trade Issue |

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| | |
|-----|-------------------------------|
| RA | Regulatory Audit |
| RAC | Resident Agent in Charge |
| RR | Regulations and Rulings |
| SAC | Special Agent in Charge |
| SEO | Supervisory Entry Officer |
| SIS | Supervisory Import Specialist |
| TEC | Trade Enforcement Coordinator |
| UDR | User Defined Rule |

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ATTACHMENT 5

Trade Enforcement Case Summary

Report Title:

Originating Port:
Discovering Officer:

Violator I/R Number:
Violator Name:
Address:
City:
State/Zip:

Type of Violation:
(b) (7)(E)
Primary Issue/Violation:

(b) (7)(E) Number:
COMOIR Number:
FP&F Case Number:
HSI Case Accepted? Y N

HSI Case Number:

CEAR Recommendation:

Action Taken:

Final Disposition:

Post Enforcement Action Review: