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U.S. Customs and
Border Protection

OT:RR:CTF:ER-H012229-PTM

George R. Tuttle, III
Three Embarcadero Center, Ste. 1160
San Francisco, California 94111

RE: Original Records

Dear Mr. Tuttle:

This is in response to your request filed with U.S. Customs and Border Protection (“CBP”) Headquarters, which we received on May 31, 2007. We are responding with an information letter, pursuant to section 177.1(d)(2)(i) of CBP Regulations, because your letter suggests that you are seeking general information rather than a specific ruling and we believe established interpretations of Customs law will address your question. See 19 C.F.R. § 177.1(d)(2)(i).

In your letter, you request advice regarding Section 163.5(a) and the meaning of the term “Original Records.” Importers currently require suppliers, carriers and customs brokers to provide key documentation such as customs entry, commercial invoice, bill of lading or air waybill in paper format. Oftentimes the importer receives a photocopy of these documents instead of the original version. An express courier that provides customs brokerage services indicated that it would no longer provide the importer with the paper copies of its entry file, but would instead provide the importer with electronically scanned versions of the documents it receives or prepares in connection with the filing entry. This would reduce the cost to the courier/broker if it did not have to copy and mail the import document packages to the importer. The issue that arises from this practice is whether the receipt of electronically scanned documents satisfy the “original records” requirement of section 163.5(a) of the Customs Regulations.

Pursuant to 19 U.S.C. § 1508, importers are required “make, keep, and render for examination and inspection records (which...include but are not limited to statements, declarations, documents and electronically generated or machine readable data)” which pertain to the importation of goods, and that are normally kept in the ordinary course of business. Additionally, 19 U.S.C § 1509(a)(1)(A) requires importers to produce for examination entry related documents.

The Customs Regulations (the “Regulations”) part 163 codifies Sections 1508 and 1509. Section 163.2 provides that owners, importers, consignees, importers of record, entry filer or other person who imports merchandise into the customs territory of the U.S. need to maintain records and must render those records for examination and inspection by CBP. Section 163.5 of the Regulations provides that those persons required to keep records under Section 163.2 of the regulations are required to “maintain all records required by law and regulation for the required retention period and as original records, whether paper or electronic, unless alternative storage methods have been adopted in accordance with paragraph (b) of this section. The records, whether in their original

format or under an alternative storage method, must be capable of being retrieved upon lawful request or demand by Customs.”

The term “records” is set forth in 19 CFR § 163.1(a)(1). That provision states that the term includes: “statements; declarations; documents; electronically generated or machine readable data; *electronically stored or transmitted information or data...*” (emphasis ours). Section 163.5 provides that the documents maintained must be “original records.” Section 163.1(h) defines “original records” as:

- (h) Original: The term “original”, when used in the context of maintenance of records, has reference to records that are in the condition in which they were made or received by the person responsible for maintaining the records pursuant to 19 U.S.C § 1508 and the provisions of this chapter.
1. Electronic information which was used to develop other electronic records or paper documents;
 2. Electronic information which is in a readable format such as a facsimile paper format or an electronic or hardcopy spreadsheet;
 3. in the case of a paper record that is part of a multi-part form where all parts of the form are made by the same impression, one of the carbon-copy parts or a or a facsimile copy or photocopy of one of the parts; and
 4. A copy of a record that was provided to another government agency which retained it, provided that, if required by Customs, a signed statement accompanies the copy certifying it to be a true copy of the record provided to the other government agency

Your letter requests clarification as to whether §163.1(h) requires an importer to maintain and keep the written document “originally prepared” by the exporter, carrier or Customs broker; or whether the importer need only maintain in original form a document that is prepared and sent to them by a third party in the condition in which they [the documents] were received. In this situation, the hypothetical document is a document electronically scanned by an express courier and sent to the importer.

The first point that bears mention is that CBP has made efforts to update its recordkeeping requirements to reflect the changing nature of electronic storage. CBP has provided guidance to importers regarding changes as to how its requirements have changed. Title VI of the North American Free Trade Agreement Implementation Act (the “NAFTA Implementation Act”, Pub. L. 103-182) contains provisions pertaining to Customs Modernization and is commonly referred to as the Customs Modernization Act or the “Mod Act.” Section 614 of the Mod Act expanded the concept of “records” set forth in §508 of the Tariff Act of 1930 to include information and data maintained in the form of electronically generated or machine readable data.

Secondly, 19 CFR § 163.1(h) specifically provides that “original” records are records that are in the condition in which they were made or received by the person responsible for maintaining the records. Thus, the Regulations recognize that original records include electronic documents in the condition in which they were received. It is clear, then, that records scanned electronically qualify as “original records” for the purposes of §163.1(h). Consequently, an entry document scanned electronically in Portable Document Format (“PDF”) or similar format and transmitted to the importer from a courier qualifies as an “original record” under 19 CFR § 163.5(a).

This interpretation is consistent with the goals of the U.S. Customs Service (now CBP) when it promulgated the Regulations. In an explanation of the final rule, the Office of Regulations and Rulings addressed comments submitted in response to the solicitation of comments to the April 23, 1997 notice of proposed rulemaking (62 FR 19704) of the Regulations concerning recordkeeping. In response to a comment concerning data streams that are then modified and sent to Customs and Border Protection, the Customs response noted that “Customs agrees that it is the information that is the focus of the Part 163 retention and production provisions.” 32 Cust. B. & Dec. No. 436, 1998 CUSBUL LEXIS 48 at 64. Thus, the Regulation is primarily concerned with the content of the data contained in a record rather than the form (physical or electronic) of the record itself.

Customs Ruling HQ 115616 addressed a similar issue: whether a faxed copy of a power of attorney is considered an original record. That ruling held that under §163.1(h) records received by the recordkeeper in facsimile format qualify as “original” records; and consequently brokers in receipt of a faxed power of attorney would no longer be required to obtain the actual instrument executed by the client when Customs requests production of the power of attorney. It is worth noting that, like a facsimile, a PDF file is “electronic information which is in a readable format” as provided for in §163.1(h)(2). Consequently, Customs Ruling HQ 115616 is clear precedent that electronic documents in readable format qualify as original records.

For the aforementioned reasons, we advise you that an importer’s receipt of electronically scanned versions of documents required pursuant to 19 U.S.C. § 1509(a)(1)(A) from a broker, forwarder or foreign shipper satisfies the “original records” requirement of §163.5(a) of the Customs Regulations. We trust that the above discussion has addressed your concerns regarding the acceptability of scanned electronic documents as original records.

Sincerely,



William G. Rosoff, Chief
Entry Process and Duty Determination Branch