

# **U.S. Customs and Border Protection Office of Strategic Trade Regulatory Audit Division**

## **Treatment of Ultimate Consignee Transactions in a Focused Assessment**

### **Introduction**

A Focused Assessment (FA) provides U.S. Customs and Border Protection (CBP) with the ability to review and verify information disclosed to CBP for accuracy and completeness. During an audit, the auditor may review records where the auditee is the Importer of Record (IOR) and/or the Ultimate Consignee (UC). Many issues can arise during an audit involving the auditee's responsibilities for reporting entry information to CBP and for record keeping. This document addresses IOR and UC responsibilities and audit procedures.

### **Background**

The entry statute (19 U.S.C. 1484 (a)) establishes responsibilities of the IOR as follows:

- (a) Requirement and time
  - (1) Except as provided in sections 1490, 1498, 1552, and 1553 of this title, one of the parties qualifying as "importer of record" under paragraph (2) (B), either in person or by an agent authorized by the party in writing, shall, using reasonable care -
    - (A) make entry therefor by filing with the Customs Service -
      - (i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and
      - (ii) notification whether an import activity summary statement will be filed; and
    - (B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to -
      - (i) properly assess duties on the merchandise,
      - (ii) collect accurate statistics with respect to the merchandise, and
      - (iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

The statute (19 U.S.C. 1484(a)(2)(B)) defines the term “importer of record” as the owner or purchaser of the merchandise or a licensed customs broker appropriately designated by the owner, purchaser or consignee of the merchandise. Statutory obligations make the IOR “accountable” for the declarations made at entry. However, while the entry statute clearly identifies the “accountable” party, liability for penalties may attach to any culpable party under civil penalty statute, 19 U.S.C. 1592 (a).

In some instances, in order to meet the burden of using reasonable care when making declarations at entry, the IOR or his agent must necessarily seek information from another source. Sometimes that is the UC. For example, the IOR may not be the owner or purchaser of the merchandise, but rather, a customs broker retained by a UC. In such a case, it is unlikely that the IOR will have sufficient information to meet its reasonable care obligation without obtaining information about the transaction from another party. The IOR is always “accountable.” If the UC provides the IOR with information that is material and false and that information is used to make entry, the UC may be culpable under 19 U.S.C. 1592.

In addition to responsibilities as IOR, auditees may be subject to recordkeeping requirements in 19 U.S.C. 1508, which state:

(a) Requirements

Any -

- (1) owner, importer, consignee, importer of record, entry filer, or other party who -
  - (A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or
  - (B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;
- (2) agent of any party described in paragraph (1); or
- (3) person whose activities require the filing of a declaration or entry, or both; shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which -
  - (A) pertain to any such activity, or to the information contained in the records required by this chapter in connection with any such activity; and
  - (B) are normally kept in the ordinary course of business.

## Procedures

During an audit, the FA team will primarily address issues related to responsibilities of the auditee as IOR. Issues related to auditee’s responsibilities as the UC will be

addressed as needed on a case-by-case basis. The IOR will be held “accountable” for the declarations made at entry. Both the IOR and UC will be held responsible for maintaining records required by 19 U.S.C. 1508. If the UC provides the IOR with information that is material and false, that information is used to make entry, and the resulting errors have significant impact, the auditors will refer the information to appropriate action officials for possible action under provisions of 19 U.S.C. 1592.

The following three scenarios provide guidance to the auditors when the auditee is the UC but NOT the IOR.

### **Consolidated Entries with Multiple Ultimate Consignees**

In the past, shippers and importers used consolidated release and entry summary for shipments that had multiple UCs arriving at the border in a single conveyance. But CBP’s automated system has limitations that allow for the submission of only a single UC. Because only one UC can be designated for the consolidated shipment, a company may be listed as the UC on the consolidated entry summary in CBP’s automated system but may not be responsible for all portions of the consolidated entry summary.

An audit sample may include a consolidated entry that identifies the auditee as the UC when other UCs are responsible for part of the consolidated shipment. When this occurs and the auditee is not the IOR, the auditee must arrange with the entry filer to provide information to CBP to prove that the auditee is not the UC responsible for all portions of the consolidated entry. The auditee is only responsible for those portions of the consolidated entry for which he is the UC. Under provisions of 19 U.S.C. 1508, the auditee must maintain records related to those portions of the entry for which he was the UC.

### **Unsolicited Merchandise on Entries Listing a Company as UC**

Sometimes companies are listed as the UC on an entry when the company does not initiate or have any information about the specific import transaction. For example, a related company may send unsolicited prototypes or samples. This may also occur if unrelated entities send unsolicited merchandise (such as returned merchandise) to a company listed as UC on the entry. During an audit, the sample may include unsolicited entries where the auditee is listed as the UC but is not the IOR. If the auditee did not initiate the import transaction, has no records related to the importation, and can adequately explain the circumstances and its lack of records to support this transaction, the auditee will not be held responsible for records required by 19 U.S.C. 1508 or for accuracy or completeness of entry information.

### **Entries Initiated by the UC but Another Entity is IOR**

In some cases, a company initiates an import or is in some way responsible for information related to the import, is listed as UC, but is not the IOR. For example, this may occur when the overseas supplier (or other entity) is IOR and handles the details of

the importation. If these entries are included in an audit sample, the UC is responsible for maintaining and making available records required by 19 U.S.C. 1508.

The IOR is always accountable for entry information. However, if the UC provides the IOR with information, which is material and false, and that information is used to make entry, the UC may be culpable under 19 U.S.C. 1592.

Aside from the record keeping obligations and the situation where the UC may be liable under 19 U.S.C. 1592 for false statements or omissions, the auditee will be responsible for entry information or internal control of entry information provided to CBP only when designated as the IOR.