

HQ 563436

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CATEGORY: CLASSIFICATION

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RE: Electronic Signature; Facsimile Copy; NAFTA Certificate of Origin CBP Form 434; 19 CFR 181.11(b), 19 CFR 181.22(b)

Dear Sirs:

This in reply to your letter dated January 24, 2006, requesting a binding ruling concerning the validity of NAFTA Certificate of Origin executed on CBP Form 434 by means of electronic signature. You submitted further information on this issue in letters dated March 30, 2006, and July 31, 2006.

FACTS:

Your client, Givaudan Flavors Corporation (Givaudan), exports goods to Mexico for which preferential tariff treatment will be claimed under the North American Free Trade Agreement (NAFTA). In accordance with NAFTA procedures, Givaudan will prepare the NAFTA Certificate of Origin, CBP Form 434, setting forth, among other things, the description and tariff classification of the goods and the basis under which the goods are "originating" and eligible for preferential tariff treatment.

The electronic signature that would be used by your client, Givaudan, is part of its protocol for completing the CBP Form 434 NAFTA Certificate of Origin in electronic format. Givaudan's Director of Corporate Affairs is responsible for ensuring the accuracy of the information on the Certificate, and is the only person authorized to affix her signature to it. The blank Certificate of Origin is maintained as a Microsoft Word document. Upon completion and review, the Director affixes her "bit map" electronic signature to the Certificate of Origin. This bit map signature is a file containing an electronically reproduced image of the Director's original handwritten signature. A Bitmap (BMP file) is a relatively low quality digital image file format, used most often in word processing applications. Files end with a .bmp. The company assures access control and proper exercise of authority to paste this electronic signature into the document by maintaining the electronic document in a password-protected environment.

Once the signature is pasted onto the Word document, the Director converts the document into electronic Adobe PDF (.pdf) format. Doing so protects the information in the document, including the electronic signature, from being altered electronically. The company does not electronically distribute or print any Certificate of Origin until it has been converted to .pdf format.

Finally, you seek confirmation that a facsimile copy of a hand-signed NAFTA Certificate of Origin is acceptable.

ISSUES:

1) Is a bitmap electronic signature affixed to CBP Form 434 a signature for the purposes of 19 CFR 181.11(b) and 19 CFR 181.22(b)(2)? 2) Will CBP accept a facsimile copy of a hand-signed CBP Form 434?

LAW & ANALYSIS:

Part 181, CBP Regulations (19 CFR Part 181) sets forth the procedures and requirements governing claims for tariff treatment under the NAFTA. The NAFTA Regulations provide that a Certificate of Origin shall be on CBP Form 434, or in such other media or formats as have been approved by Canadian, Mexican or U.S. authorities. Whatever the medium or format, and whether in support of an import into the United States or in support of an export to Canada or Mexico, the Certificate must be signed by the exporter. 19 CFR 181.11(b) sets out the requirements for Certificates prepared by exporters in the United States. For a Certificate in support of preferential treatment for goods imported into the U.S., 19 CFR 181.22(b)(2) specifies that a Certificate supporting a claim of

originating status for goods must be "signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts."

As your submissions point out, the CBP NAFTA Regulations do not elaborate on the meaning of "signed". Review by this office indicates that the NAFTA Regulations do not address specifically the validity of an electronic signature for any aspect of Customs NAFTA business. Also, it does not appear that CBP has taken steps to give public notice of its policies governing the use of electronic signatures by importers, exporters and others for the conduct of Customs business.

Your initial submission notes that in C.S.D. 79-94, Customs approved the use of electronic facsimile signatures for the execution of bonds. In that decision Customs examined the nature and meaning of "to sign" and "signature" at length. You submit that the electronic signature described above should be acceptable because it indicates intent to execute or authenticate the CBP Form 434. The submission also recalls that the Government Paperwork Elimination Act (GPEA) requires federal agencies to implement procedures under which electronic signatures or other forms of electronic authentication shall not be denied legal effect, validity or enforceability because such records are in electronic form. Pub. L. 105-277, 44 U.S.C. 3504 (2002).

The NAFTA Regulations and related guidance already provide that a copy of a Certificate of Origin will be accepted if the Port Director requests a certificate for review. See 19 CFR 181.22(b). This is taken to include photocopies, facsimiles and digital copies. See CBP Directive No. 3810-014A (July 26, 2005), para. 2.7 and para. 5.2.1. It is noted that in this context CBP treats a copy of hand-signed CBP Form 434 certificate as a signed and validly binding undertaking.

As pointed out in the submission, CBP decisions in various contexts have treated signatures submitted by facsimile as valid for the execution by signature of various Customs instruments. See C.S.D. 79-94 (execution of a Customs bond); C.S.D. 79-363 (certification of a Notice of Exportation); Headquarters Ruling (HQ) 219147 (Dec. 5, 1986) (signature on entry documentation). These CBP decisions adopted the Uniform Commercial Code (UCC) definition for "signed", under which a signature may be any symbol executed or adopted by a party indicating the party's intent to authenticate an instrument or writing. This office can find nothing about Givaudan's bitmap electronic signature that differs from this definition: it indicates Givaudan's intent to adopt and authenticate the Certificate.

The Government Paperwork Elimination Act of 1998 (GPEA), Pub. L. 105-277, 44 U.S.C. 3504 (note), states that electronic records and their related electronic signatures are not to be denied legal effect, validity or enforceability merely because they are in electronic form. Section 1710 of the GPEA defines electronic signatures consistently with the existing CBP/UCC approach:

(1) Electronic signature. The term 'electronic signature' means a method of signing an electronic message that--
(A) identifies and authenticates a particular person as the source of the electronic message; and (B) indicates such person's approval of the information contained in the electronic message
44 USC 3504 (Note). As set out in the instant submission, the bitmap electronic signature of Givaudan clearly identifies the person executing the CBP Form 434 on behalf of the company. That person's identity is authenticated by the procedures under which only the person with authority may affix the signature and protect it permanently from alteration. In the context of the statements and certifications made by an exporter on the CBP Form 434, execution of this signature in electronic form indicates, to the same extent as any other signature, that the signer knows and approves of the representations made in the CBP Form 434.

As against the above affirmative considerations, CBP can find no basis for rejecting the electronic bitmap signature and protocol set out in the submission. Such a signature should be treated by CBP as a valid signature within the meaning of 19 CFR 181.11(b) and 19 CFR 181.22(b).

It is noted that commercially available electronic signature products probably would be acceptable for use on CBP Form 434. That is, they would be acceptable to the extent that they identify and authenticate the signer and indicate that the signer approves the information being supplied to CBP, as has been shown in the present submission.

Furthermore, as noted above, a facsimile copy of a hand-signed CBP Form 434 is considered to be among the types of copies acceptable for the purpose of responding to a request by CBP for the importer to provide a copy of a certificate. See 19 CFR 181.22(b); CBP Directive No. 3810-014A, para. 5.2.1 (July 26, 2005).

HOLDING:

CBP finds the electronic bitmap signature to be used on CBP Form 434 as set forth above to be a valid signature pursuant to 19 CFR 181.11(b) and 19 CFR 181.22(b).

CBP treats a facsimile copy of a hand-signed CBP Form 434 as validly signed and binding on the person signing.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents are filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction. Sincerely,

Monika R. Brenner, Chief Valuation and Special Programs Branch