



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

HQ H350722

January 16, 2026

OT:RR:CTF:EPDR H350722 SAB

CATEGORY: Entry

Judy Staudt, Acting Center Director
Automotive and Aerospace Center of Excellence and Expertise
477 Michigan Avenue, Suite 200
Detroit, MI 48226

ATTN: Margaret Hernandez, Supervisory Entry Officer

RE: Online platform; conducting customs business without a license.

Dear Acting Center Director:

This is in reference to your request for internal advice, dated July 23, 2025, regarding [***] (hereinafter “Unlicensed Company”) operating an online platform, without an organizational license or national permit, that is marketing various services for potential importers. You inquired whether the Unlicensed Company is conducting customs business without a license, or otherwise violating an applicable regulatory requirement. Our decision follows.

You have requested that the identity of this unlicensed entity be treated as confidential. Inasmuch as this request conforms to the requirements of 19 C.F.R. § 177.2(b)(7), the request for confidentiality is approved. The information contained within brackets, and all attachments contained in your request, will not be released to the public and will be withheld from the published version of this ruling.

FACTS:

The Unlicensed Company is a foreign entity operating an online platform that provides various services to potential importers for a fee. The three principal services provided are: connecting importers to brokers for purposes of making entry; utilizing an optical character recognition (OCR) tool to cull entry data from shipping documents; and, deriving Harmonized Tariff Schedule of the United States (HTSUS) subheading suggestions for specific articles via an artificial intelligence (AI) classification tool. Additionally, although this service is not specifically marketed online, the Unlicensed Company has certified and submitted U.S. Customs and Border Protection (CBP) Form 5106 on behalf of new importers. The Automotive and Aerospace Center of Excellence and Expertise (Center) describes these four services as detailed below.

First, in order to connect importers to brokers for purposes of making entry, the Unlicensed Company engages third-party brokers who are not employees of the company. Once an importer has uploaded shipping documents to the online platform, and provided entry data for the shipment, the Unlicensed Company requires the importer to execute a power of attorney (POA). The POA authorizes a third-party broker to make entry on behalf of the importer. After the importer executes the POA, they upload it to the online platform and the broker is then able to view all the documents and data provided by the importer. The importer and broker are able to communicate with each other through a chat system embedded into the online platform. The Center did not specify how such a third-party broker is paid to make entry for an importer, nor how clients of the Unlicensed Company are billed for this service.

Second, irrespective of whether an importer engages a third-party broker to make entry through the Unlicensed Company's online platform, importers may utilize an OCR tool to cull entry data from shipping documents. The OCR tool scans the uploaded documents and identifies information that will be utilized to make entry, and can pre-fill the data into an entry document.

Third, irrespective of whether an importer engages a third-party broker to make entry through the Unlicensed Company's online platform, importers may utilize an AI classification tool to derive HTSUS subheading suggestions for specific articles. To utilize this tool, an importer will input information regarding an article into the online platform, such as: product name; material; and end-use. In response, the tool generates "tiered" classification suggestions that identify applicable subheadings. The number of potential subheading suggestions is tied to the specificity and sufficiency of the information input into the tool, such that an importer may be prompted to select an applicable HTSUS subchapter, heading, and eventually subheading, until potentially a single classification suggestion remains. The Unlicensed Company has appended the subheadings derived by its AI classification tool with a disclaimer stating:

[P]lease be advised that the system you are using is a beta phased system which operates based on artificial intelligence. The HTS classification results suggested by the system are merely an estimation produced by the system based on the information you have provided and are intended to serve merely as a guideline to assist you in understanding what your possible final HTS classification may be. Notwithstanding anything to the contrary, you hereby fully acknowledge and agree that the final HTS classification to which you shall be legally obligated, as shall actually be determined by the Customs [sic] at its sole discretion, may differ from the HTS classification suggested by the [AI tool].

Fourth, to enable new importers to make entry, the Unlicensed Company has certified and submitted CBP Form 5106 on their behalf. The Center notes that CBP has received a CBP Form 5106 from the Unlicensed Company for several importers.

Based on the above four services that the Unlicensed Company provides to potential importers, your office is concerned that the company may be impermissibly conducting customs business. Your office sought internal advice to determine whether these services may be

provided by a company that is not licensed to conduct customs business, and whether these services may otherwise violate a requirement under Part 111 of CBP Regulations.

ISSUE:

Whether the Unlicensed Company is impermissibly conducting customs business, or otherwise violating a requirement under Part 111 of CBP Regulations.

LAW AND ANALYSIS:

Pursuant to 19 U.S.C. § 1641(b)(1), no person may conduct customs business on behalf of another unless the person holds a valid customs broker's license. *See also* 19 C.F.R. §§ 111.2(a)(1); 111.2(a)(2)(i). A broker may not allow an unlicensed third party to conduct customs business on its behalf. 19 C.F.R. § 111.37. The term "customs business" is defined as:

[A]ctivities involving transactions with U.S. Customs and Border Protection concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by U.S. Customs and Border Protection upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with U.S. Customs and Border Protection in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

19 U.S.C. § 1641(a)(2); 19 C.F.R. § 111.1.

The U.S. Court of International Trade has emphasized that the definition of "customs business" is "very broad." *Delgado v. United States*, 581 F. Supp. 2d 1326, 1331 (Ct. Int'l Trade 2008). Activities constituting customs business encompass not just the transmission of electronic documents, or parts of such documents, intended to be filed with CBP, but also activities "in furtherance of" such transmissions, and "relating to" preparing such documents for transmission to CBP. *Id.*; 19 U.S.C. § 1641(a)(2). To determine whether any of the activities conducted by the Unlicensed Company fall within the statutory definition of "customs business," we must examine each in turn.

(1) Connecting importers to brokers for purposes of making entry.

The Unlicensed Company enables importers to make entry by connecting them with a third-party broker through its online platform. In order to make entry, an importer uploads shipping documents and inputs entry data into the platform, then executes a POA. The POA authorizes a third-party broker to make entry on behalf of the importer, and once uploaded to the online platform, allows the broker to view all the documents and data provided by the importer. The broker is able to communicate with the importer through a chat system embedded into the online platform.

CBP has previously addressed whether an unlicensed entity impermissibly conducts customs business when serving as an intermediary between a broker and importer for entry purposes. In Headquarters Ruling Letter (HQ) H258556, dated September 6, 2017, a freight forwarder sought to remit the estimated duties, taxes, and fees payable to CBP for an entry of merchandise from an importer to a licensed broker. The “necessary communication regarding a particular entry” occurred directly between the broker and importer, and the broker obtained a POA from the importer. *Id.* CBP determined that any transaction to make entry and pay the associated customs duties must be structured in such a way that only a licensed customs broker or importer is effecting submission. *Id.* CBP cautioned that an unlicensed entity may not serve as an intermediary between a broker and importer if the unlicensed entity is actively participating “in decisions and activities relating to the preparation or filing of Customs documents for imported merchandise, or relating to any other action amounting to customs business.” *Id.* Quoting HQ 115248 (Aug. 28, 2001). However, if the intermediary’s role is limited to “mere transmission between parties” without any active participation in making entry or tendering payment to CBP, then the unlicensed entity’s conduct does not constitute customs business. *Id.*

CBP’s decision in HQ H258556 underscores that the definition of “customs business” specifically excludes “the mere electronic transmission of data received for transmission to C[BP].” 19 U.S.C. § 1641(a)(2); *see also* 19 C.F.R. § 111.1. Accordingly, an unlicensed entity may serve as an intermediary between a broker and importer so long as the entity’s role is limited to transmitting data or funds to a broker on the importer’s behalf and the data or funds are ultimately transmitted to CBP by the broker. Thus, although unlicensed entities are “precluded from conducting customs business,” such a limited role as an intermediary does not entail customs business. HQ H318461 (Aug. 25, 2022).

Here, the Unlicensed Company is enabling an importer to liaise with a broker for the purpose of making entry, but does not participate in the importer’s uploading of documents and data to the platform, or act as intermediary in communication regarding the entry, nor participate in making entry. Accordingly, by operating an online platform which allows importers to transmit documents and data to brokers, and communicate with brokers through an embedded chat system, the Unlicensed Company is merely facilitating the electronic transmission of information to a broker but has no role in deciding what is transmitted. We find that due to the Unlicensed Company’s not actively participating in deciding what information must be transmitted to a broker for entry purposes, nor participating in the transmission of such documents and data to CBP, the Unlicensed Company is not impermissibly conducting customs business. Nevertheless, the Unlicensed Company’s online platform implicates POA and confidentiality requirements under Part 111 of CBP Regulations.

CBP revised its regulations governing the execution of POAs in 2022. *See Modernization of the Customs Broker Regulations*, 87 Fed. Reg. 63267 (Oct. 18, 2022). Pursuant to 19 C.F.R. § 111.36(c)(3), a broker “must execute a customs power of attorney directly with the importer of record[,] and not via a freight forwarder or other third party, to transact customs business for that importer of record.” CBP explained that this new requirement “precludes a broker from obtaining a power of attorney from someone other than an importer”. 87 Fed. Reg. 63288. This requirement is implicated by the Unlicensed Company providing

importers with a POA which authorizes a third-party broker to make entry on behalf of an importer. The Unlicensed Company may not act as an intermediary between a broker and importer in the formation or execution of a POA. A broker “must execute and obtain a power of attorney directly from . . . the importer of record or drawback claimant, and not a . . . third party that is not part of the broker-importer[] relationship.” 87 Fed. Reg. 63288. Consequently, a third-party broker engaged by the Unlicensed Company may be violating 19 C.F.R. § 111.36(c)(3) if an importer is not directly receiving a POA from the broker, if the broker is not directly receiving the executed POA from the importer, or if the Unlicensed Company is acting as an intermediary in the execution of the POA.

The Unlicensed Company’s chat function also raises confidentiality concerns. CBP’s regulations governing the confidentiality of client records were also revised in 2022, but remained unchanged in substantive part. 87 Fed. Reg. 63267. Pursuant to 19 C.F.R. § 111.24, records “pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents or any information connected with the records to any persons other than those clients,” or certain named representatives absent subpoena, court order, or written authorization by a client. CBP explained that its “longstanding position on this matter is that absent written client consent, a broker may not share client information.” 85 Fed. Reg. 34836 (June 5, 2020).

The “records” accorded confidential treatment under 19 C.F.R. § 111.24 encompass “documents, data and information referred to in” Part 111 of CBP Regulations in addition to “any other records . . . required to be maintained by a broker under [P]art 163.” 19 C.F.R. § 111.1. Such records thus include the entry data and documentation that a broker is required to maintain pursuant to 19 C.F.R. § 163.3. *See also* 19 C.F.R. §§ 163.2(a)(2); 163.1(a)(2)(i). Accordingly, if a third-party broker discloses confidential client information to the Unlicensed Company by communicating with importers through the chat function embedded into the online platform, this would violate 19 C.F.R. § 111.24 unless the importer provided written authorization for such a disclosure. However, if an importer is disclosing entry data and documentation to the Unlicensed Company by uploading such information to the online platform, or disclosing information through the chat function, no violation of 19 C.F.R. § 111.24 occurs because the regulation does not constrain an importer’s ability to divulge its own records. *See* HQ H272715 (Feb. 7, 2017) (“whether a violation 19 C.F.R. § 111.24 may occur . . . depends on the flow of client information . . . because 19 C.F.R. § 111.24 does not apply to circumstances in which information is disclosed by an entity other than a customs broker”).

(2) Providing an OCR tool which scans shipping documents to extract entry data.

The Unlicensed Company provides importers with an OCR tool to cull entry data from shipping documents. The OCR tool scans the uploaded documents and identifies information that will be utilized to make entry, and can pre-fill the data into an entry document. This tool is available to importers irrespective of whether they engage a third-party broker to make entry through the Unlicensed Company’s online platform. If an importer does engage a third-party broker through the online platform, it is unclear whether use of this OCR tool would be optional or if it operates automatically once an importer uploads documents.

CBP has consistently held that an unlicensed entity is precluded from inputting entry data into a filing that will be transmitted to CBP. In HQ H326926, dated December 19, 2023, an unlicensed “offshore data entry company” sought to manually input data into a broker’s Automated Broker Interface (ABI) software system. The company’s employees would, from the company’s place of business outside of the United States, review shipment documents and extrapolate the data elements necessary to make entry. *Id.* The data would be input into a broker’s ABI system, and the broker would subsequently transmit the entry to CBP. *Id.* CBP determined that by identifying the data elements that would be utilized to make entry, the offshore company was impermissibly conducting customs business because 19 U.S.C. § 1641(a)(2) explicitly includes the “preparation of documents or forms in any format and the electronic transmission of documents . . . or parts thereof intended to be filed with” CBP in the definition of “customs business.” *Id.*

Similarly, in HQ H068278, dated September 28, 2009, a service bureau sought to provide licensed customs brokers and other parties with software developed by an unlicensed foreign contractor that would extract information relevant to filing entry through OCR technology. The entry would be automatically prepared by the software, though a broker would ultimately transmit the entry to CBP. The bureau would maintain a “web-based database” that could provide a broker with an importer’s data and documents to complete missing fields for information the OCR technology did not successfully extract. CBP determined that an unlicensed foreign contractor making decisions as to what constitutes relevant entry information, such as value and classification, and then having the software automatically apply this decision matrix to generating the data appearing on an entry, was impermissibly conducting customs business because these actions “extend beyond the mere electronic transmission of data.” CBP also determined that the bureau was impermissibly conducting customs business by contracting with a foreign unlicensed entity to utilize its OCR technology. CBP explained that the bureau was acting “through its contractor.” In summary, whether data is extracted manually or automatically though an OCR tool, CBP has repeatedly held that an unlicensed entity cannot decide what data should appear on an entry.

Here, the Unlicensed Company is providing importers with an OCR tool that scans shipping documents uploaded to an online platform specifically in order to cull entry data from such documents, irrespective of whether the data is ultimately sent to a third-party broker. We stress that the filing of an entry is not a prerequisite to such an activity constituting customs business because 19 U.S.C. § 1641(a)(2) explicitly encompasses preparation of documents or forms in any format, or parts thereof, which are ultimately intended to be filed with CBP. An OCR tool which identifies precise pieces of information for a shipment intended to be entered thus entails customs business because it prepares parts of the data appearing on an entry in an electronic format. *See* HQ H326926 (“identifying entry-related data . . . falls squarely within the scope of preparing parts of an entry intended to be filed with CBP”).

Although the Center provided no information regarding the entity that developed the decision matrix for the Unlicensed Company’s OCR tool, if this tool was developed by the Unlicensed Company then, just as the contractor in HQ H068278, we find that the company would be impermissibly conducting customs business. Additionally, if the Unlicensed Company instead contracted to utilize an OCR tool developed by another unlicensed entity as part of the

Unlicensed Company's online platform, we find that the company would still be impermissibly conducting customs business akin to the bureau in HQ H068278. In such a circumstance, the Unlicensed Company is conducting customs business through its unlicensed contractor by directing the contractor to create a decision matrix identifying what data will appear on an entry.

(3) Providing an AI-powered classification tool.

The Unlicensed Company provides customers with an AI classification tool to derive HTSUS subheading suggestions for specific articles. To utilize this tool, an importer will input information regarding an article into the online platform, such as: product name; material; and end-use. In response, the tool generates "tiered" classification suggestions that identify applicable subheadings. The number of potential subheading suggestions is tied to the specificity and sufficiency of the information input into the tool, such that an importer may be prompted to select an applicable HTSUS subchapter, heading, and eventually subheading, until potentially a single classification suggestion remains. The classification results provided by this tool are appended with a disclaimer, as detailed above. This tool is available to importers irrespective of whether they engage a third-party broker to make entry through the Unlicensed Company's online platform.

CBP has previously addressed whether an unlicensed entity impermissibly conducts customs business when classifying merchandise on behalf of others. To determine whether such classification constitutes customs business, CBP has consistently looked to whether the classification is tied to a prospective entry. A nexus to a prospective entry can be established by the number of digits provided and the context in which the classification information is provided. For example, in HQ H260075, dated April 3, 2017, CBP considered whether providing a classification to the six-digit level of the HTSUS for purposes of an Importer Security Filing (ISF) requires a customs broker's license. CBP determined this does not constitute customs business "so long as the HTS[US] number is not reported past the six-digit level." *See also Importer Security Filing and Additional Carrier Requirements*, 73 Fed. Reg. 71730 (Nov. 25, 2008); HQ H045695 (Oct. 15, 2010). Conversely, "[i]f the number is reported to the ten-digit HTSUS level, then [it] concerns classification for purposes of customs business and requires a license." The distinction between a six-digit and ten-digit classification is tied to the requirements for making entry – filing an entry with CBP requires classifying merchandise to the ten-digit level. *See, e.g.*, HQ H051395 (May 20, 2009) (noting that "[p]roper classification under the HTSUS requires a ten digit number"). Accordingly, if the Unlicensed Company's AI classification tool only derives potential HTSUS subheadings to the six-digit level, then customs business is not being conducted. However, if the AI classification tool is deriving subheadings beyond the six-digit level, then a customs broker's license is generally required if that classification information will or may eventually be used for an entry.

To determine whether a classification is, or may be, used for a particular entry, CBP has distinguished identifying subheadings for imported merchandise from providing general guidance. For example, in HQ 114654, dated May 28, 1999, CBP explained that "as a general rule, unlicensed persons may instruct others on customs laws, regulations, policies and procedures . . . they may explain the use of the Harmonized Tariff Schedules . . . or provide an overview of the different methods of valuation. They may not, however, advise a client on how

to classify, appraise, or mark merchandise that is going to be the subject of an entry.” CBP subsequently elaborated that providing “tariff numbers prior to entry is a customs business activity when the possibility exists that . . . classification information derived from [this] process will end up on [an] entry” because the process of identifying the appropriate subheading for imported merchandise constitutes an activity relating to the preparation of the entry. HQ 115248 (Aug. 28, 2001) (*citing* 19 U.S.C. § 1641(a)(2)). The nexus to a prospective entry is established when the merchandise being classified is imported, or is intended to be imported, because all merchandise imported into the United States is required to be entered unless specifically exempt. 19 C.F.R. § 141.4(a). Consequently, if the Unlicensed Company’s AI classification tool is deriving subheadings to the ten-digit level for merchandise that has been imported, or is intended to be imported, then customs business is being impermissibly conducted by an unlicensed entity classifying merchandise for which an entry is required to be filed with CBP.

Recently, in HQ H290535, dated September 29, 2022, CBP addressed whether an unlicensed company could classify the merchandise its customers imported if that information was accompanied by a disclaimer. In that case, a domestic unlicensed company would act as a supplier for various articles purchased and imported by customers who maintained independent “customs compliance teams.” The company sought to classify the merchandise it supplied, to the eight- and ten-digit level, subject to verification by a customer’s compliance team. The company would include a disclaimer that declared: “in no way should this [classification] information be used as confirmation or endorsement” that a customer should utilize the subheadings identified when making entry. CBP determined the company was impermissibly conducting customs business despite the inclusion of a disclaimer because it was “providing specific subheadings on specific goods that its clients have ordered and for which they will be filing entry documentation with C[BP].” CBP explained that if a customer requests subheading information prior to importing merchandise then “there is a strong possibility that the customers will use subheadings provided on the entry filed with CBP,” such that by providing the requested information a company in effect directs customs brokers on how to prepare the requisite entry documents. CBP thus held that including a disclaimer did not absolve the company from impermissibly conducting customs business.

In contrast to HQ H290535, CBP has held that a disclaimer appended to classification information provided by an unlicensed entity can be meaningfully implemented in the context of a general classification database. In HQ H272798, dated January 26, 2017, an unlicensed foreign company sought to prepare a tariff classification database that could be utilized to assist a client’s customs brokers in making entry but would be available to clients “regardless of whether [a] particular product is ever actually imported into the United States.” The database would feature a disclaimer that declared, in key part, that the classification information provided was “for general, educational and planning purposes only. The specific tariff classification to be applied to a specific entry of merchandise [wa]s to be determined by the licensed Customhouse broker.” In evaluating whether development of such a database constitutes customs business, CBP acknowledged that it represented a “fine line” between whether the database would be used as a general resource or for purposes of filing entry. CBP concluded that so long as the disclaimer was meaningfully implemented, and did not direct clients or brokers on how to prepare an entry, then its development did not constitute customs business.

A key distinction between the database at issue in HQ H272798 versus the classification information provided in HQ H290535 was that clients in the former situation could access the database for all products irrespective of whether they purchased or imported any specific merchandise – whereas in HQ H290535, the clients sought to classify the exact merchandise they purchased and imported. The database thus facilitated the classification of merchandise without a nexus to an actual importation for which entry would be filed with CBP. Similarly, here, the Unlicensed Company’s AI classification tool derives HTSUS subheading suggestions from the information provided by a customer, and may be utilized irrespective of whether an importer engages a third-party broker to make entry through the Unlicensed Company’s online platform. Accordingly, to the extent that the tool is providing customers with general classification information that is disconnected from an actual or intended importation of merchandise requiring entry, then so long as the Unlicensed Company’s disclaimer is meaningfully implemented, we find that this tool is akin to the narrowly permissible database in HQ H272798. However, if the tool is instead providing classification information beyond the six-digit level to customers who have engaged a third-party broker to make entry through the Unlicensed Company’s online platform, then we find that the tool is impermissibly directing customers and brokers on how to prepare the requisite entry documents akin to HQ H290535. In this latter context, the tool is providing “specific subheadings on specific goods” for which an entry will be filed with CBP. HQ H290535. In summary, so long as the Unlicensed Company’s AI classification tool operates separately from the portal connecting importers to brokers for entry purposes, such that the tool does not direct either party on the proper classification which should appear on an entry and the disclaimer is meaningfully implemented, then it is permissible.

We note an additional consideration pertaining to the requirements for conducting customs business arises when an automated tool is, or may be, utilized to make entry for imported merchandise. As discussed above, with respect to the OCR tool developed in HQ H068278, dated September 28, 2009, CBP determined that an unlicensed foreign contractor deciding what constitutes relevant entry information, and then having the software automatically apply this decision matrix to generating the data appearing on an entry, was impermissibly conducting customs business. Pursuant to 19 U.S.C. § 1641(a), a customs broker is defined as “any person granted a customs broker’s license.” The term “person” is further defined in 19 C.F.R. § 111.1 to include individuals, partnerships, associations, and corporations. For each such category of persons, a precondition to licensure is an individual who is a citizen of the United States, that is at least 21 years old and of good moral character, that has attained a passing grade on the Customs Broker License Exam. *See, e.g.*, 19 C.F.R. §§ 111.11(a)-(c) (requiring partnerships, associations or corporations to have at least one member or officer who is a licensed customs broker). A licensed individual broker is therefore a precondition to conducting customs business on behalf of others, whether conducted by that individual or by a legal person such as a partnership or corporation. This precondition necessarily extends to automated tools – if such tools are utilized to conduct customs business, then an individual broker or other licensed person must have a role in specifying what information, like value or classification, is automatically generated by the tool’s decision matrix and ultimately appears on an entry filed with CBP. A tool does not constitute a “person” as defined by 19 C.F.R. § 111.1, such that the actual decision regarding the classification of imported merchandise, or any other information needed to make entry, must be made by a duly licensed customs broker.

(4) *Certifying and submitting CBP Form 5106.*

CBP has received CBP Form 5106s that were certified and submitted by the Unlicensed Company on behalf of several importers. By submitting this form on behalf of new importers, the Unlicensed Company enables them to file entry with CBP. A CBP Form 5106 is “required if an entity intends to transact Customs business and be involved as an importer, consignee/ultimate consignee . . . on an informal or formal entry.” *Agency Information Collection Activities; Extension; Create/Update Importer Identity Form (CBP Form 5106)*, 89 Fed. Reg. 45911 (May 24, 2024). A CBP Form 5106 must be filed prior to making entry and is thus needed for first-time importers. *Id.*; *see also* 19 C.F.R. § 24.5(a). The form is also used to change or update importer information that is on file with CBP.

CBP has yet to address whether the completion and submission of CBP Form 5106 constitutes customs business pursuant to 19 U.S.C. § 1641(b)(1). The definition of “customs business” broadly encompasses “the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with [CBP] in furtherance of” activities such as entry and the payment or refund of duties, taxes, and fees. 19 U.S.C. § 1641(b)(1); 19 C.F.R. § 111.1. Unless a party has filed CBP Form 5106 with CBP, the party may not be identified as the importer of record on an entry, such that there is a clear link between the filing of this form and making entry. CBP has previously stated that “[i]mporter of record information is inextricably linked to making entry as it ‘is the basis for establishing the release and entry of merchandise, liquidation, and issuance of bills and refunds.’” *Agency Information Collection Activities: Importer ID Input Record*, 80 Fed. Reg. 44361 (July 27, 2015); *see also* HQ 116025 (Sept. 29, 2003) (finding that “the identity of a client is information that appears on entry documents, and thus does relate to the transaction of ‘customs business’”). Filing CBP Form 5106 is thus the preparation of a document or form intended to be filed with CBP in furtherance of making entry, signifying that submission of this form to CBP constitutes customs business. Consequently, we find that only a licensed customs broker may complete and submit CBP Form 5106 on behalf of another party. Based on this conclusion, we further find that the Unlicensed Company has impermissibly conducted customs business by submitting and certifying CBP Form 5106 on behalf of several new importers intending to file entry with CBP.

We have now concluded our examination of the four services the Unlicensed Company provides to customers: connecting importers to brokers for purposes of making entry; utilizing an OCR tool to cull entry data from shipping documents; utilizing an AI classification tool to generate HTSUS subheading suggestions for specific articles; and, submitting and certifying CBP Form 5106. Our determination as to whether each service constitutes customs business is detailed above. We now address your office’s secondary question of whether these services may otherwise violate a requirement under Part 111 of CBP Regulations. Upon consideration, we find that the Unlicensed Company’s conduct implicates 19 C.F.R. § 111.36(b) by obtaining a fee from third-party brokers making entry on behalf of customers, and implicates 19 C.F.R. § 111.3(a) by conducting customs business abroad. Each of these considerations is addressed below.

Pursuant to 19 C.F.R. § 111.36(b), a broker is prohibited from entering into any agreement with an unlicensed person to transact customs business for others if the fees or other benefits resulting from such transactions benefit the unlicensed person. The sole exception to this limitation permitted by CBP Regulations is when a customs broker compensates a freight forwarder for referring customers to a broker, if certain conditions are satisfied. *See* 19 C.F.R. § 111.36(c). CBP has repeatedly held that unlicensed entities other than a freight forwarder may not receive fees or other compensation such as a commission from a broker if such benefits are tied to particular customs business transactions performed by a broker. *See, e.g.,* HQ H290002 (Nov. 30, 2018) (distinguishing commissions paid per brokerage service from a flat amount not tied to any particular transaction); HQ H276784 (Dec. 29, 2016) (finding that payments representing a percentage of the entry filing fee “paid either per importer or per shipment” were impermissible). Here, the Unlicensed Company charges customers a fee to access its online platform in order to be connected with a third-party broker who will file an entry on the customer’s behalf. We caution that such an arrangement may violate 19 C.F.R. § 111.36(b) if the fee paid to the Unlicensed Company by an importer seeking to engage a third-party broker is tied to the entry filed by the broker.

Finally, pursuant to 19 C.F.R. § 111.3(a), “[c]ustoms business must be conducted within the customs territory of the United States as defined in § 101.1 of this chapter.” The “customs territory of the United States” is defined in 19 C.F.R. § 101.1 as “the States, the District of Columbia, and Puerto Rico.” The Unlicensed Company, akin to the entities at issue in HQ H326926 and HQ H068278, is a foreign entity operating outside the customs territory of the United States. We caution that licensed customs brokers engaged by the Unlicensed Company must carefully structure their transactions in order to abide by 19 C.F.R. § 111.3(a) and ensure that customs business is conducted solely within the customs territory of the United States.

HOLDING:

The Unlicensed Company is not conducting customs business by connecting importers to brokers if the company is merely acting as an intermediary in the transmission of electronic data. The Unlicensed Company is impermissibly conducting customs business by: developing an OCR tool that identifies what data will appear on an entry; deriving HTSUS subheading suggestions beyond the six-digit level via its AI classification tool if the merchandise being classified will be entered; and, submitting and certifying CBP Form 5106 on behalf of others.

You are instructed to provide this decision to the Unlicensed Company no later than sixty (60) days from the date of the decision. Sixty days from the date of the decision, the Office of Trade, Regulations and Rulings, will make the decision available to CBP personnel, and to the public on the Customs Rulings Online Search System (CROSS) at <https://rulings.cbp.gov/> which can be found on the U.S. Customs and Border Protection website at <http://www.cbp.gov> and other methods of public distribution.

Sincerely,

Yuliya A. Gulis, Director
Commercial and Trade Facilitation Division