

CUSTOMS DIRECTIVE

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CUSTOMS DIRECTIVE NO. 2210-001A

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SUBJECT: RESTRICTIONS ON IMPORTATION OF SEDITIOUS MATTER

1. PURPOSE. To instruct inspectors and other Customs officers as to seditious matters which are prohibited by section 305, Tariff Act of 1930, as amended (19 U.S.C. 1305), and at the same time distinguish political propaganda which is admissible.

2. POLICY.

2.1 The U.S. Customs Service will not infringe upon the rights of individuals against unreasonable search and seizure while enforcing 19 U.S.C. 1305.

3. AUTHORITIES/REFERENCES.

19 U.S.C.1305; Customs Directive: 3340-006A (February 4, 2000).

4. BACKGROUND.

4.1 Seditious and treasonable matter. Section 305, Tariff Act of 1930, as amended (19 U.S.C. 1305), prohibits the importation of matter advocating or urging treason or insurrection against the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States. A 1978 district court decision, which was affirmed by the Supreme Court, interpreted this section of the statute as prohibiting only those materials that are "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." (460 F. Supp. 56). The court stated that this interpretation was necessary for the statute to pass constitutional challenge. Customs officers must distinguish matter that merely advocates lawless action, which is admissible, from prohibited matter that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

4.2 Seditious matter described. Customs officers will recognize seditious matter in such forms as printed and graphic exhortations to the reader, encouraging or promoting imminent acts of armed or other violence against constituted government and military authorities and institutions; disruption of utility and similar public services by specifically suggested acts of vandalism, arson, and the like; and subversion of members of military and associated organizations of the defense establishment. Prohibited seditious matter does not include abstract teaching that promotes violence and other illegal acts.

Rather, materials must be directed to inciting or producing imminent lawless action and be likely to incite or produce such action in order for it to be prohibited.

4.3 Political propaganda described. A 1965 decision of the United States Supreme Court, 381 U.S. 301, resulted in the immediate termination of the segregation and detention of international mail containing foreign political propaganda. Customs enforcement interest consequently expired with respect to the printed and similar political propaganda in the baggage of arriving travelers, including those being precleared at foreign airports of departure. Customs officers will recognize such propaganda in the form of printed or other materials which seek to glorify the government or political party of a foreign country or a social system abroad; to promote foreign ideologies or policies, particularly of authoritarian regimes; to express hypercritical views of Free World society and capitalistic systems; and to thereby influence American attitudes toward foreign regimes and, frequently, against the foreign policy of the United States. Some of the propaganda may also seek to promote racial, religious, or social dissension within the United States. This type of political propaganda is admissible unless it is also seditious, that is, directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

5. PROCEDURES.

5.1 Customs officers should refer to Customs Directive 3340-006A (February 4, 2000) which contains procedures for reviewing, copying and seizing documents. The Directive provides under which circumstances Customs officers may scan documents and correspondence at the border to determine, among other things, whether the documents or correspondence being imported are obscene, treasonous, seditious (as defined above) or otherwise prohibited in violation of 19 U.S.C. 1305. If, after scanning the documents, they appear to relate to a violation of 19 U.S.C. 1305, the officer may read the document to determine what action is appropriate.

5.2 If an officer has reasonable suspicion that the materials are being imported in violation of 19 U.S.C. 1305, the documents may be detained for a reasonable period of time until a determination is made as to admissibility, seizure or referral to another agency which may have greater expertise. If the officer has probable cause to believe that a document or paper is subject to seizure because it is seditious, it may be seized. Documents that may be seized may also be copied, in appropriate circumstances, and referred to the Office of Investigations. Only documents subject to seizure may be copied. In questionable circumstances, the Office of Investigations or the Associate/Assistant Chief Counsel should be consulted. Until there has been a final determination that there is probable cause to believe that the materials violate that portion of 19 U.S.C. 1305 pertaining to seditious matters, no copies may be made and no dissemination of the information may be made except to those reasonably necessary to make that determination and the determination must be made at a level no lower than the supervisory level after consultation with the Associate/Assistant Chief Counsel. If a decision is made not to forfeit seized materials, the original materials will be returned to the owner and all copies will be destroyed. No records may be made or retained which

describe the content of the seized material or the identity of the person from whom the materials were seized.

5.3 Seizure of inadmissible seditious matter. All materials for which there is probable cause to believe they are seditious in nature (as described in BACKGROUND) are to be considered inadmissible and subject to seizure and the civil enforcement procedures of 19 U.S.C. 1305, for Customs treatment and disposition as prescribed by section 12.40, Customs Regulations. Such materials must be forwarded to the U.S. Attorney's office within 4-14 days for judicial forfeiture. Where materials have been seized (or detained and an immediate determination as to admissibility cannot be made) a Customs receipt shall be delivered to the owner of the materials, who shall be informed that he may communicate, concerning his claims and further disposition, with the local port director or if the matter has been referred for judicial forfeiture, to the local U.S. Attorney's office.

5.4 Admissible political propaganda. Such materials as those described as political propaganda in BACKGROUND shall not be subject to seizure solely on that account, however distasteful the propaganda may seem to be or offensively exaggerated in its descriptions, portrayals, or comparisons. Materials that criticize the United States Government or U.S. officials are not subject to seizure unless the materials "are directed to inciting or producing imminent lawless action and are likely to incite or produce such action". All Customs officers must refrain in the presence of the owner from volunteering expressions and observations of disapproval of criticism of offensive materials. If, among a traveler's baggage, there are many such publications, inspection may be confined to one or two and ordinarily it may be accepted that the unexamined remainder also consists of admissible propaganda. Materials confined to propaganda content shall not be seized or detained.

5.5 Telephone referral. To minimize prospects of aggravated traveler reaction attending enforcement against questionable material in personal baggage, telephonic advice from the Associate/Assistant Chief Counsel on any unconcluded baggage transaction may be sought at once by supervisory inspectors.

6. **RESPONSIBILITY.** It is the responsibility of all Customs inspectors and other Customs officers to assure compliance with the Directive.

7. **NO PRIVATE RIGHT CREATED.** This document is an internal policy statement of the U.S. Customs Service and does not create any rights, privileges, or benefits for any person or party.

Assistant Commissioner
Office of Field Operations