Bureau of Customs and Border Protection

CBP Decisions

DEPARTMENT OF THE TREASURY

19 CFR PARTS 10, 24, 162, 163, 178 AND 191

CBP Dec. 05–07

RIN 1505–AB47

UNITED STATES–CHILE FREE TRADE AGREEMENT

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs and Border Protection ("CBP") Regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States-Chile Free Trade Agreement entered into by the United States and the Republic of Chile.

DATES: Interim rule effective March 7, 2005; comments must be received by June 6, 2005.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number ("RIN") and/or by the title "United States-Chile Free Trade Agreement," by one of the following methods:

- EPA Federal Partner EDOCKET Web Site: http://www.epa.gov/feddocket. Follow instructions for submitting comments on the web site. The Department of Homeland Security ("DHS"), including CBP, has joined the Environmental Protection Agency ("EPA") online public docket and comment system on its Partner Electronic Docket System ("Partner EDOCKET"). As an agency of the DHS, CBP will use the EPA Federal Partner EDOCKET system.

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Mail, hand delivery or courier: paper, disk or CD-ROM submissions may be mailed or delivered to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, N.W. (Mint Annex), Washington, D.C. 20229.

Instructions: All submissions received must include the agency name and docket number (if available) or RIN number for this rulemaking. All comments received will be posted without change to http://www.epa.gov/feddocket, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to http://www.epa.gov/feddocket. You may also access the Federal eRulemaking Portal at http://www.regulations.gov. Comments may be inspected at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, N.W. (5th Floor), Washington, D.C. during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Robert Abels, Office of Field Operations, (202) 344–1959.

Other Operational Aspects: Lori Whitehurst, Office of Field Operations, (202) 344–2722.

Audit Aspects: Mark Hanson, Office of Regulatory Audit, (202) 344–2877.

Legal Aspects: Edward Leigh, Office of Regulations and Rulings, (202) 572–8827.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 6, 2003, the United States and the Republic of Chile (the "Parties") entered into an agreement, the U.S.-Chile Free Trade Agreement ("US-CFTA"). The stated objectives of the US-CFTA are to: encourage expansion and diversification of trade between the Parties; eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties; promote conditions of fair competition in the free trade area; substantially increase investment opportunities in the territories of the Parties; provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory; create effective procedures for the implementation and application of the US-CFTA, for its joint administration and for the resolution of

disputes; and establish a framework for further bilateral and multilateral cooperation to expand and enhance the benefits of the US-CFTA.

The provisions of the US-CFTA were adopted by the United States with the enactment of the United States-Chile Free Trade Agreement Implementation Act (the "Act"), Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note)(2003).

Customs and Border Protection (CBP) has the responsibility to administer the provisions of the US-CFTA and the Act which relate to the importation of goods into the United States from Chile. Those customs-related US-CFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Three (National Treatment and Market Access for Goods) and the provisions of Chapter Four (Rules of Origin and Origin Procedures) and Chapter Five (Customs Administration).

The tariff-related provisions within US-CFTA Chapter Three which require regulatory action by CBP are Article 3.7 (Temporary Admission of Goods), Article 3.8 (Drawback and Duty Deferral Programs), Article 3.9 (Goods Re-Entered after Repair or Alteration), Article 3.10 (Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials) and Article 3.20 (Rules of Origin and Related Matters).

Chapter Four of the US-CFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Chile (US-CFTA country) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as provided for under Article 4.1 and Annex 4.1 of the US-CFTA. Under Article 4.1 within that Chapter, originating goods may be grouped in three broad categories: (1) goods which are wholly obtained or produced entirely in one or both of the Parties; (2) goods which are produced entirely in those countries and which satisfy the specific rules of origin in US-CFTA Annex 4.1 (change in tariff classification requirement and/or regional value content requirement); and (3) goods which are produced entirely in one or both of the Parties exclusively from materials that originate in those countries. Article 4.2 sets forth the methods for calculating the regional value content of a good. Article 4.3 sets forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the de minimis rule. Article 4.4 sets forth the rules for determining whether accessories, spare parts or tools delivered with a good qualify as material used in the production of such good. Article 4.6 provides for accumulation of production by two or more producers. Article 4.7 provides a de minimis criterion. The remaining Articles within Section A of Chapter Four consist of additional sub-rules, applicable to the originating good concept, involving fungible materials, packaging materials, packing materials, transshipment, and non-qualifying operations. The basic rules of origin in

Chapter Four of the US-CFTA are set forth in General Note 26, Harmonized Tariff Schedule of the United States (HTSUS). In addition, Section B of Chapter Four sets forth the procedural requirements which apply under the US-CFTA, in particular with regard to claims for preferential tariff treatment.

Chapter Five sets forth the customs operational provisions related to the implementation and continued administration of US-CFTA.

In order to provide transparency and facilitate their use, the majority of the US-CFTA implementing regulations set forth in this document have been included within new subpart H in Part 10 of the CBP Regulations (19 CFR). However, in those cases in which US-CFTA implementation is more appropriate in the context of an existing regulatory provision, the US-CFTA regulatory text has been incorporated in an existing Part within the CBP Regulations. In addition, this document sets forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new US-CFTA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

To create new subpart H of 19 CFR Part 10, the existing sections in that part have been re-designated into subparts A through G.

DISCUSSION OF AMENDMENTS

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding a sentence at the end stating that, as regards the goods described in the added sentence, no bond or other security will be required in the case of goods originating in Chile. The provisions of US-CFTA Article 3.7 (temporary admission of goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP Regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart H

General provisions

Section 10.401 outlines the scope of new Subpart H, Part 10. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart H, Part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP Regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart H, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the regulations.

Section 10.402 sets forth definitions of common terms used in multiple contexts or places within Subpart H, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 2.1 and Annex 2.1 of the US-CFTA or in § 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions which apply in a more limited Subpart H context are set forth elsewhere with the substantive provisions to which they relate.

Import requirements

Section 10.410 sets forth the procedure for claiming US-CFTA tariff benefits at the time of importation and, as provided in US-CFTA Article 4.12, requires a U.S. importer to file a declaration, and to correct a declaration that contains incorrect information, in connection with the claim. Section 10.410 also implements US-CFTA Article 4.12 by requiring that the declaration that the goods are US-CFTA originating goods be based on a certification of origin which is in the possession of the importer.

Section 10.411 implements US-CFTA Article 4.14 which concerns the obligations of an importer regarding the submission of a certification of origin to CBP and the maintenance of the certification and other relevant records regarding the imported good. Included in § 10.411 is a provision that a certification of origin may be used either for a single importation or for multiple importations of identical goods.

Section 10.416, which is based on US-CFTA Article 4.16, authorizes the denial of US-CFTA tariff benefits if the importer fails to comply with the requirements of Subpart H, Part 10.

Tariff Preference Level

Sections 10.420 and 10.421, which are based on US-CFTA Article 3.20, require an importer claiming preferential tariff treatment under a tariff preference level (TPL) to make a statement containing information demonstrating that a good satisfies the requirement for entry under the TPL.

Export requirements

Section 10.430 implements US-CFTA Article 4.15 which concerns use of a certification of origin for purposes of certifying that an exported good is an originating good and thus entitled to preferential tariff treatment under the US-CFTA. This section also implements US-CFTA Article 4.15.3 which requires an exporter or producer to promptly provide written notification of errors in a certification to any person to whom the certification was given.

Section 10.430 concerns the maintenance of records by a U.S. exporter or producer who executes a certification of origin, as required

by US-CFTA Article 4.15 and by 19 U.S.C. 1508 as amended by § 207 of the Act. Section 10.430 also concerns the availability of those records both to CBP and to the Chilean customs administration.

Section 10.431 concerns measures applied for a failure of a U.S. exporter or producer to comply with a requirement of Subpart H, Part 10 and is based on US-CFTA Article 4.16.

Post-importation duty refund claims

Sections 10.440 through 10.442 implement US-CFTA Article 4.12, which allows an importer, who did not claim US-CFTA tariff benefits on a qualifying good at the time of importation, or a non-qualifying apparel good claiming a TPL, to apply for a refund of any excess duties at any time within one year after the date of importation. Such a claim may be made even if liquidation of the entry would otherwise be considered final under other provisions of law.

Rules of origin

Sections 10.450 through 10.463 provide the implementing regulations regarding the rules of origin provisions of HTSUS General Note 26 and US-CFTA Chapter Four.

Definitions

Section 10.450 sets forth terms that are defined for purposes of the Rules of Origin.

General Rules of Origin

Section 10.451 sets forth the basic rules of origin established in Chapter Four of the US-CFTA. The provisions of § 10.451 apply both to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under General Note 26, HTSUS.

Section 10.451(a) lists those goods which are originating goods because they are wholly obtained or produced entirely in the U.S., Chile, or both. Section 10.451(c) provides that goods, produced entirely in the U.S. or Chile from originating materials, are originating goods.

Section 10.451(b) sets forth the basic rules of origin for goods which are produced with any non-originating material content. Essential to the rules in § 10.451(b) are the specific rules of General Note 26(n), HTSUS, which are incorporated by reference. Under paragraph (b)(1) of § 10.451, a good will qualify as an originating good only if all non-originating materials used in the production of

the good undergo the applicable change in tariff classification, set forth in General Note 26(n), as a result of processing performed entirely in the US-CFTA countries. Under paragraph (b)(2) of § 10.451, a regional value content requirement must be satisfied in addition to a change in tariff classification for certain cases as specified by the rules of General Note 26(n), and, for other cases, only a regional value content must be satisfied. In all cases, the good must also satisfy all other requirements of the note.

Section 10.452 sets forth the rule that a good or material is not an originating good or material as a result of simple combining or packaging operations or mere dilution with a substance that does not materially alter the characteristics of the good or material.

Value Content

Section 10.454 sets forth the basic rules which apply for purposes of determining whether an imported good satisfies a minimum regional value content (RVC) requirement. Section 10.455 sets forth the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the de minimis rules.

Accessories, spare parts or tools.

Section 10.456 specifies when certain accessories, spare parts or tools will be treated as a material used in the production of the good.

Fungible goods and materials.

Section 10.457 sets forth the rules by which "fungible" goods or materials may be claimed as originating.

Accumulation of production

Section 10.458 sets forth the rule by which originating goods or materials from the territory of Chile or the United States that are used in the production of a good in the territory of the other country will be considered to originate in the territory of such other country. In addition, this section also establishes that a good that is produced by one or more producers in the territory of Chile or the United States, or both, is an originating good if the good satisfies all of the applicable requirements of the rules of origin of the US-CFTA.

De Minimis

Section 10.459 sets forth a de minimis rule by which goods that fail to qualify as originating under the rules in § 10.451 may be considered originating goods for preferential tariff treatment. There are a number of exceptions to the de minimis rule as well as a separate rule for textile and apparel goods.

Indirect materials

Section 10.460 provides that indirect materials are considered to be originating materials without regard to where they are produced.

Packaging materials; packing materials

Sections 10.461 and 10.462 provide that retail packaging materials and packing materials for shipment are to be disregarded with respect to their actual origin for purpose of the change in tariff classification requirement of the General Note 26(n). These sections also set forth the treatment of packaging and packing materials for purposes of the regional value content requirement of the note.

Transshipment

Section 10.463 sets forth the rule that with certain exceptions, an originating good loses its originating status and is treated as a non-originating good if, subsequent to the production in a US-CFTA country that qualifies the good as originating, the good undergoes production in a territory outside that of a US-CFTA country.

Origin verifications and determinations

Sections 10.470 through 10.474 implement the provisions of US-CFTA Article 4.16 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to US-CFTA preferential duty treatment and the issuance and application of origin determinations resulting from such verifications. These sections also govern the conduct of verifications directed to producers of materials that are used in the production of a good for which US-CFTA preferential duty treatment is claimed.

Section 10.470 provides for the verification by CBP of a claim for US-CFTA tariff treatment and any information submitted in support of the claim. This section further provides that, if CBP is prevented from conducting a verification, the claim may be denied.

Section 10.471 provides for textile and apparel goods imported into the United States to be reviewed by Chilean authorities (at the request of CBP), regardless of whether a claim is made for preferential tariff treatment. CBP may also assist in a verification in Chile under this section.

Section 10.471 also provides for specific actions to be taken during and after the verification if directed by the Committee for the Implementation of Textile Agreements. These actions can be taken on the specific goods subject to the verification or to similar goods, or to any textile or apparel goods being imported into the United States by the entity subject to the verification.

Section 10.472 provides for textile and apparel goods exported from the United States to Chile to be reviewed by CBP (at the request of Chilean authorities),

Section 10.473 implements US-CFTA Article 4.16.3 by providing for the issuance of a written determination of origin based on an analysis of the results of the origin verification. This section also prescribes the information required to be included in the written determination and includes special content and issuance requirements in the case of a negative origin determination.

Penalties

Section 10.480 concerns the general application of penalties to US-CFTA transactions and is based on US-CFTA Article 5.9.

Section 10.481 reflects US-CFTA Article 4.16 with regard to exceptions to the application of penalties in the case of an importer who voluntarily makes a corrected declaration (as provided for in US-CFTA Article 4.12—see § 10.410(b)).

Section 10.482 reflects US-CFTA Article 4.15 with regard to exceptions to the application of penalties in the case of an exporter or producer who voluntarily provides notice of an incorrect certification of origin (see § 10.411). Section 10.483, which sets forth standards for determining whether the correction or notice is effected "voluntarily", is based on the standards applied for prior disclosures under 19 U.S.C. 1592 as set forth in § 162.74 of the CBP Regulations.

Goods returned after repair or alteration

Section 10.490 implements US-CFTA Article 3.9 regarding duty treatment on goods re-entered after repair or alteration in Chile.

Part 24

A paragraph is added to § 24.23(c), which concerns the merchandise processing fee (MPF) to implement § 204 of the US-CFTA, providing that the MPF is not applicable to goods that qualify as originating goods as provided for in the US-CFTA.

Part 162

Part 162 contains regulations regarding the inspection and examination of merchandise involved in importation. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional US-CFTA records maintenance and examination provisions contained in new Subpart H, Part 10.

Part 163

A conforming amendment is made to § 163.1 to include the completion of a Chile certification of origin and any other supporting documentation pursuant to the US-CFTA as an activity for which records must be maintained. Also, the list appearing in Appendix to § 163 (commonly known as the (a)(1)(A) list) is also amended to add the Chile certification of origin, required by new § 10.410.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility for a tariff preference or other rights or benefits under the US-CFTA and the Act.

Part 191

Part 191 contains regulations regarding drawback. A cross-reference is added to § 191.0, which is the scope section of the part, to refer readers to the additional US-CFTA drawback provisions contained in new Subpart H, Part 10.

COMMENTS

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to CBP by email, mail, hand delivery or courier, including comments on the clarity of these interim regulations and how they may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), and § 103.11(b) of the CBP Regulations (19 CFR Part 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, N.W. (5th Floor), Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202–572–8768. Comments may also be accessed on the EPA Partner EDOCKET Web Site or Federal eRulemaking Portal. For additional information on accessing comments via the EPA Partner EDOCKET Web Site or Federal eRulemaking Portal, see the "ADDRESSES" section of this document.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies amending their regulations generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, consider public comments in deciding on the final content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard notice and comment procedures and requirement for a delayed effective date do not apply to agency rulemaking that involves the foreign affairs function of the United States. CBP has determined that these interim regulations involve

the foreign affairs function of the United States, as they implement preferential tariff treatment and related provisions of the US-CFTA.

In addition, section 553(b)(B) of the APA provides that notice and public procedure are not required when an agency for good cause finds them impracticable, unnecessary, or contrary to the public interest. CBP finds that providing notice and public procedure for these regulations would be impracticable, unnecessary, and contrary to the public interest because they establish procedures that the public needs to know in order to claim the benefit of a tariff preference under the Act. The US-CFTA went into effect on January 1, 2004, and the importing public needs the certainty of regulations as soon as possible.

Finally, section 553(d)(1) and (d)(3) of the APA exempt agencies from the requirement of publishing notice of final rules at least 30 days prior to their effective date when a substantive rule grants or recognizes an exemption or relieves a restriction and when the agency finds that good cause exists for not meeting the advance publication requirement. For the reasons described above, CBP has determined that these regulations grant an exemption and relieve restrictions and that good cause exists for dispensing with a delayed effective date.

EXECUTIVE ORDER 12866 AND REGULATORY FLEXIBILITY ACT

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

PAPERWORK REDUCTION ACT

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117.

The collections of information in these regulations are in §§ 10.410 and 10.411. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the US-CFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the US-CFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 8,000 hours.

Estimated average annual burden per respondent: 0.2 hours.

Estimated number of respondents: 40,000.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document is Fernando Peña, Attorney, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices and the Department of the Treasury participated in its development.

SIGNING AUTHORITY

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or her/her delegate) to approve regulations related to certain CBP revenue functions.

LIST OF SUBJECTS

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements (United States-Chile Free Trade Agreement).

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Export, Import, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 191

Commerce, Customs duties and inspection, Drawback, Reporting and recordkeeping requirements, Trade agreements.

AMENDMENTS TO THE REGULATIONS

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 is revised, and the specific authority for new Subpart H is added, to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.401 through 10.490 also issued under Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note).

2. Sections 10.1 through 10.183 are designated as new Subpart A and a subpart heading is added previous to the undesignated heading "Articles Exported and Returned" to read as follows:

Subpart A – General Provisions

* * * * *

3. Sections 10.191 through 10.199 are designated as new Subpart B, the undesignated heading "Caribbean Basin Initiative" is removed, and in its place, a subpart heading is added to read as follows:

Subpart B – Caribbean Basin Initiative

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4. Sections 10.201 through 10.207 are designated as new Subpart C, the undesignated heading "Andean Trade Preference" is removed, and in its place, a subpart heading is added to read as follows:

Subpart C – Andean Trade Preference

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5. Sections 10.211 through 10.217 are designated as new Subpart D, the undesignated heading "Textile and Apparel Articles Under the African Growth and Opportunity Act" is removed, and in its place, a subpart heading is added to read as follows:

Subpart D – Textile and Apparel Articles Under the African Growth and Opportunity Act

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6. Sections 10.221 through 10.237 are designated as new Subpart E and a subpart heading is added previous to the undesignated heading "Textile and Apparel Articles Under the United States-Caribbean Basin Trade Partnership Act" to read as follows:

Subpart E – United States-Caribbean Basin Trade Partnership Act

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7. Sections 10.241 through 10.257 are designated as new Subpart F and a new subpart heading is added previous to the undesignated heading "Apparel and Other Textile Articles Under the Andean Trade Promotion and Drug Eradication Act" to read as follows:

Subpart F – Andean Trade Promotion and Drug Eradication Act

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8. Sections 10.301 through 10.311 are designated as new Subpart G, the undesignated heading "United States-Canada Free Trade Agreement" is removed, and in its place, a subpart heading is added to read as follows:

Subpart G – United States-Canada Free Trade Agreement

* * * * *

9. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for car-

rying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico or Chile and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating in Canada, Mexico or Chile within the meaning of General Note 12 or 26, HTSUS.

* * * * *

10. In § 10.36a, the first sentence of paragraph (a) is amended by removing the words "(as defined in §§ 10.8 and 181.64 of this chapter)" and adding, in their place, the words "(as defined in §§ 10.8, 10.490 and 181.64 of this chapter)".

11. Part 10, CBP Regulations, is amended by adding a new Subpart H to read as follows:

Subpart H - United States-Chile Free Trade Agreement

Sec.

General Provisions

Import Requirements

Tariff Preference Level

Export Requirements

Post-Importation Duty Refund Claims

Rules of Origin

Origin Verifications and Determinations

Penalties

Goods Returned After Repair or Alteration

SUBPART H - UNITED STATES-CHILE FREE TRADE AGREEMENT

General Provisions

§ 10.401 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Chile Free Trade Agreement (the US-CFTA) entered into on June 6, 2003, and under the United States-Chile Free Trade Agreement Implementation Act (the Act; 117 Stat. 909). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the US-CFTA and the Act are contained in parts 12, 24, 162, 163 and 191 of this chapter.

§ 10.402 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) Certification. "Certification" means, either when used by itself or in the expression "certification of origin", the certification established under article 4.13 of the US-CFTA, that a good qualifies as an originating good under the US-CFTA;

(b) Claim of origin. "Claim of origin" means a claim that a textile or apparel good is an originating good or a good of a Party;

(c) Claim for preferential tariff treatment. "Claim for preferential tariff treatment" means a claim that a good is entitled to the duty rate applicable under the US-CFTA to an originating good;

(d) Customs authority. "Customs authority" means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(e) Customs Valuation Agreement. "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;

(f) Days. "Days" means calendar days;

(g) Customs duty. "Customs duty" includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the US-CFTA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly com-

petitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(h) Enterprise. "Enterprise" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(i) GATT 1994. "GATT 1994" means the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;

(j) Goods. "Goods" means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries;

(k) Harmonized System. "Harmonized System (HS)" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) Heading. "Heading" means the first four digits in the tariff classification number under the Harmonized System;

(m) HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States as promulgated by the U.S. International Trade Commission;

(n) Indirect material. "Indirect material" means a good used in the production, testing, or inspection of a good in the territory of the United States or Chile but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of the United States or Chile, including–

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the goods;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(o) National. "National" means a natural person who has the nationality of a Party according to Annex 2.1 of the US-CFTA or a permanent resident of a Party;

(p) Originating. "Originating" means qualifying under the rules of origin set out in Chapter Four (Rules of Origin and Origin Procedures) of the US-CFTA;

(q) Party. "Party" means the United States or the Republic of Chile;

(r) Person. "Person" means a natural person or an enterprise;

(s) Preferential tariff treatment. "Preferential tariff treatment" means the duty rate applicable under the US-CFTA to an originating good;

(t) Subheading. "Subheading" means the first six digits in the tariff classification number under the Harmonized System;

(u) Tariff preference level. "Tariff preference level" means a quantitative limit for certain non-originating textiles and textile apparel goods that may be entitled to preferential tariff treatment as if such goods were originating based on the goods meeting the production requirements set forth in § 10.421 of this subpart.

(v) Textile or apparel good. "Textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ATC), which is part of the WTO Agreement;

(w) Territory. "Territory" means:

(1) With respect to Chile, the land, maritime and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(x) WTO Agreement. "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization of April 15, 1994.

Import Requirements

§ 10.410 Filing of claim for preferential tariff treatment upon importation.

(a) Declaration. In connection with a claim for preferential tariff treatment for an originating good under the US-CFTA, the U.S. importer must make a written declaration that the good qualifies for such treatment. The written declaration is made by including on the entry summary, or equivalent documentation, the symbol "CL" as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via electronic interchange.

(b) Corrected declaration. If, after making the declaration required under paragraph (a) of this section, the U.S. importer has reason to believe that the declaration or the certification on which the declaration was based contains information that is not correct, the importer must, within 30 calendar days after the date of discovery of the error, make a corrected declaration, submit a letter or other written statement to the CBP office where the original declaration was filed specifying the correction and pay any duties that may be due.

§ 10.411 Certification of origin.

(a) Contents. An importer who claims preferential tariff treatment on a good must submit, at the request of the port director, a certification that the good qualifies as originating. A certification submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good (if known);

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 26(n), HTSUS;

(vi) The preference criterion as set forth in paragraph (e) of this section;

(vii) For multiple shipments of identical goods, the blanket period in "mm/dd/yyyy to mm/dd/yyyy" format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

"I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain, and present upon request, documentation necessary to support this certification, and to inform, in writing, all persons to whom the certification was given of any changes that could affect the accuracy or validity of this certification; and

The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for those goods in the United States-Chile Free Trade Agreement; there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of _____ pages, including all attachments."

(b) Responsible official or agent. The certification required to be submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer; exporter; producer; or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts. If the person making the certification is not the producer of the good, or the producer's authorized agent, the person may sign the certification of origin based on:

(1) A certification that the good qualifies as originating issued by the producer; or

(2) Knowledge of the exporter or importer that the good qualifies as an originating good.

(c) Language. The certification must be completed either in the English or Spanish language. If the certification is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certification.

(d) Applicability of certification. A certification may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification. For purposes of this paragraph,

"identical goods" means goods that are the same in all respects relevant to the production that qualifies the goods as originating.

(e) Preference criteria. The preference criterion to be included on the certification as required in paragraph (a)(2)(vi) of this section is as follows:

(1) Preference criterion "A", refers to a good that is wholly obtained or produced entirely in the territory of Chile or of the United States, or both (see General Note 26(b)(i), HTSUS);

(2) Preference criterion "B" , refers to a good that is produced entirely in the territory of Chile or the United States, or both (see General Note 26(b)(ii), HTSUS), and

(i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, or

(ii) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS;

(3) Preference criterion "C" refers to a good that is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials (see General Note 26(b)(iii), HTSUS).

§ 10.412 Importer obligations.

(a) General. An importer who makes a declaration under § 10.410(a) is responsible for the truthfulness of the declaration and of all the information and data contained in the certification, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents.

(b) Compliance. In order to make a claim for preferential treatment under § 10.410 of this subpart, the importer:

(1) Must have records that explain how the importer came to the conclusion that the good qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the applicable rules of origin set forth in General Note 26, HTSUS, and in this subpart. Those records may include a properly completed certification as set forth in § 10.411 of this subpart; and

(2) May be required to demonstrate that the conditions set forth in § 10.463 of this subpart were met if the imported article was shipped through an intermediate country.

(c) Information provided by exporter or producer. The fact that the importer has issued a certification based on information provided by the exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section. A U.S. importer who voluntarily makes a corrected declaration will not be subject to penalties for having made an incorrect declaration (see § 10.481 of this subpart).

(d) Internal controls. In accordance with Part 163 of this chapter, importers are expected to establish and implement internal controls which provide for the periodic review of the accuracy of the certifications or other records referred to in paragraph (b)(1) of this section.

§ 10.413 Validity of certification.

A certification that is completed, signed and dated in accordance with the requirements listed in § 10.411 will be accepted by CBP as valid for four years from the date on which the certification was signed. If the port director determines that a certification is illegible or defective or has not been completed in accordance with § 10.411, the importer will be given a period of not less than five business days to submit a corrected certification.

§ 10.414 Certification not required.

(a) General. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certification that the good qualifies for preferential tariff treatment for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) Exception. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certification that the good qualifies as originating. The importer must submit such a certification within 30 calendar days from the date of the written notice. Failure to timely submit the certification or information will result in denial of the claim for preferential tariff treatment.

§ 10.415 Maintenance of records.

(a) General. An importer claiming preferential treatment for a good imported into the United States must maintain in the United States, for five years after the date of importation of the good, a certification (or a copy thereof) that the good qualifies as originating, and any records and documents that the importer has relating to the origin of the good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and,

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) Method of maintenance. The records referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.416 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) Effect of noncompliance. If the importer fails to comply with any requirement under this subpart, including submission of a certification of origin under § 10.411(a) or submission of a corrected certification under § 10.413, the port director may deny preferential tariff treatment to the imported good.

(b) Failure to provide documentation regarding transshipment. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in § 10.463 were met.

Tariff Preference Level

§ 10.420 Filing of claim for tariff preference level.

A cotton or man-made fiber fabric or apparel good described in § 10.421 that does not qualify as an originating good under § 10.451 may nevertheless be entitled to preferential tariff treatment under the US-CFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 for a good described in § 10.421(a) or (b) or 9911.99.40 for a good described in § 10.421(c)) immediately above the applicable subheading in Chapter 52 through 62 of the HTSUS under which each non-originating cotton or man-made fiber fabric or apparel good is classified.

§ 10.421 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under § 10.420:

(a) Woven fabrics. Certain woven fabrics of Chapters 52, 54 and 55 of the HTS (Headings 5208 to 5212; 5407 and 5408; 5512 to 5516) that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods, if they are wholly formed in the U.S. or Chile regardless of the origin of the yarn used to produce these fabrics.

(b) Cotton or man-made fabric goods. Certain cotton or man-made fabric goods of Chapters 58 and 60 of the HTS that meet the appli-

cable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods if they are wholly formed in the U.S. or Chile regardless of the origin of the fibers used to produce the spun yarn or the yarn used to produce the fabrics[1].

(c) Cotton or man-made apparel goods. Cotton or man-made apparel goods in Chapters 61 and 62 of the HTS that are both cut (or knit-to-shape) and sewn or otherwise assembled in the U.S. or Chile regardless of the origin of the fabric or yarn, provided that they meet the applicable conditions for preferential tariff treatment under the US-CFTA, other than the condition that they are originating goods.

§ 10.422 Submission of certificate of eligibility.

(a) Contents. An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber fabric or apparel good must submit, at the request of the port director, a certificate of eligibility containing information demonstrating that the good satisfies the requirements for entry under the applicable TPL, as set forth in § 10.421. A certificate of eligibility submitted to CBP under this section:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good;

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification of the good, to six or more digits, as well as the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 or 9911.99.40);

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[1] The relevant HTS subheadings for fabric goods in Chapters 58 or 60 eligible under HTS 9911.99.20. are as follows: 5801.21, 5801.22, 5801.23, 5801.24, 5801.25, 5801.26, 5801.31, 5801.32, 5801.33, 5801.34, 5801.35, 5801.36, 5802.11, 5802.19, 5802.20.0020, 5802.30.0030, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30.0020, 5805.00.30, 5805.00.4010, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05, 5807.10.2010, 5807.10.2020, 5807.90.05, 5807.90.2010, 5807.90.2020, 5808.10.40, 5808.10.70, 5808.90.0010, 5809.00, 5810.10, 5810.91, 5810.92, 5811.00.20, 5811.00.30, 6001.10, 6001.21, 6001.22, 6001.91, 6001.92, 6002.40, 6002.90, 6003.20, 6003.30, 6003.40, 6004.10, 6004.90, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43, 6005.44, 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43, 6006.44

(vi) For a single shipment, the commercial invoice number;

(vii) For multiple shipments of identical goods, the blanket period in "mm/dd/yyyy to mm/dd/yyyy" format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

"I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support this certificate, and to inform, in writing, all persons to whom the certificate was given of any changes that could affect the accuracy or validity of this certificate; and

The goods were produced in the territory of one or more of the parties, and comply with the preference requirements specified for those goods in the United States-Chile Free Trade Agreement and Chapter 99, subchapter XI of the HTSUS. There has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of _____ pages, including all attachments."

(b) Responsible official or agent. The certificate of eligibility required to be submitted under this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) Language. The certificate of eligibility must be completed either in the English or Spanish language. If the certificate is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certificate;

(d) Applicability of certificate of eligibility. A certificate of eligibility may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification. For purposes of this paragraph, "identical goods" means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment under an applicable TPL.

§ 10.423 Certificate of eligibility not required.

(a) General. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certificate of eligibility for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) Exception. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing TPL claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certificate of eligibility. The importer must submit such a certificate within 30 calendar days from the date of the written notice. Failure to timely submit the certificate will result in denial of the claim for preferential tariff treatment.

§ 10.424 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) Effect of noncompliance. If the importer fails to comply with any requirement under this subpart, including submission of a certificate of eligibility under § 10.422, the port director may deny preferential tariff treatment to the imported good.

(b) Failure to provide documentation regarding transshipment. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in § 10.425 were met.

§ 10.425 Transit and transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) General. A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) Documentary evidence. An importer making a claim for preferential tariff treatment may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

Export Requirements

§ 10.430 Export requirements.

(a) Submission of certification to CBP. An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must provide a copy of the certification (or such other medium or format approved by the Chile customs authority for that purpose) to CBP upon request.

(b) Notification of errors in certification. An exporter or producer in the United States who has completed and signed a certification of origin, and who has reason to believe that the certification contains or is based on information that is not correct, must immediately after the date of discovery of the error notify in writing all persons to whom the certification was given by the exporter or producer of any change that could affect the accuracy or validity of the certification.

(c) Maintenance of records — (1) General. An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must maintain in the United States, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including records and documents associated with:

(i) The purchase of, cost of, value of, and payment for, the good;

(ii) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(iii) Where appropriate, the production of the good in the form in which the good was exported.

(2) Method of maintenance. The records referred to in paragraph (c) of this section must be maintained in accordance with the Generally Accepted Accounting Principles applied in the country of production and in the case of exporters or producers in the United States must be maintained in the same manner as provided in § 163.5 of this chapter.

(3) Availability of records. For purposes of determining compliance with the provisions of this part, the exporter's or producer's

records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

§ 10.431 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(g) for failure to retain records required to be maintained under § 10.430.

Post-Importation Duty Refund Claims

§ 10.440 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.441 of this part. Subject to the provisions of § 10.416 of this part, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.442(c) of this part.

§ 10.441 Filing procedures.

(a) Place of filing. A post-importation claim for a refund under § 10.440 of this part must be filed with the director of the port at which the entry covering the good was filed.

(b) Contents of claim. A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) Subject to § 10.413 of this part, a copy of a certification that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating

to the good under any provision of law; and if any such protest or petition or request for reliquidation has been filed, the statement must identify the protest, petition or request by number and date.

§ 10.442 CBP processing procedures.

(a) Status determination. After receipt of a post-importation claim under § 10.441 of this part, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) Pending protest, petition or request for reliquidation or judicial review. If the port director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the port director will suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under this subpart until judicial review has been completed.

(c) Allowance of claim—(1) Unliquidated entry. If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) Liquidated entry. If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) Denial of claim—(1) General. The port director may deny a claim for a refund filed under § 10.441 of this part if the claim was not filed timely, if the importer has not complied with the requirements of § 10.441 of this part, if the certification submitted under § 10.441(b)(2) of this part cannot be accepted as valid (see § 10.413 of this part), or if, following initiation of an origin verification under § 10.470 of this part, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.470 of this part.

(2) Unliquidated entry. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry,

and written notice of the denial and the reason for the denial will be given to the importer.

(3) Liquidated entry. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give written notice of the denial and the reason for the denial to the importer.

Rules of Origin

§ 10.450 Definitions.

For purposes of §§ 10.450 through 10.463:

(a) Adjusted value. "Adjusted value" means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation and the value of packing materials and containers for shipment as defined in § 10.450(m) of this subpart;

(b) Exporter. "Exporter" means a person who exports goods from the territory of a Party;

(c) Fungible goods or materials. "Fungible goods or materials" means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(d) Generally Accepted Accounting Principles. "Generally Accepted Accounting Principles" means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of a Party;

(e) Good. "Good" means any merchandise, product, article, or material;

(f) Goods wholly obtained or produced entirely in the territory of one or both of the Parties. "Goods wholly obtained or produced entirely in the territory of one or both of the Parties" means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(5) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced on board factory ships from the goods referred to in paragraph (f)(5) provided such factory ships are registered or recorded with that Party and fly its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and

(11) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (f)(1) through (f)(10), or from their derivatives, at any stage of production;

(g) Importer. "Importer" means a person who imports goods into the territory of a Party;

(h) Issued. "Issued" means prepared by and, where required under a Party's domestic law or regulation, signed by the importer, exporter, or producer of the good;

(i) Location of the producer. "Location of the producer" means site of production of a good;

(j) Material. "Material" means a good that is used in the production of another good, including a part, ingredient, or indirect material;

(k) Non-originating good. "Non-originating good" means a good that does not qualify as originating under this subpart;

(l) Non-originating material. "Non-originating material" means a material that does not qualify as originating under this subpart;

(m) Packing materials and containers for shipment. "Packing materials and containers for shipment" means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) Producer. "Producer" means a person who engages in the production of a good in the territory of a Party;

(o) Production. "Production" means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) Recovered goods. "Recovered goods" means materials in the form of individual parts that are the result of:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good of Annex 4.18, US-CFTA;

(q) Remanufactured goods. "Remanufactured goods" means industrial goods assembled in the territory of a Party, listed in Annex 4.18, US-CFTA, that:

(1) Are entirely or partially comprised of recovered goods;

(2) Have the same life expectancy and meet the same performance standards as new goods; and

(3) Enjoy the same factory warranty as such new goods; and

(r) Self-produced material. "Self-produced material" means a material that is produced by the producer of a good and used in the production of that good; and

(s) Value. "Value" means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.451 Originating goods.

A good imported into the customs territory of the United States will be considered an originating good under the US-CFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of Chile or of the United States, or both; or

(b) The good is produced entirely in the territory of Chile or of the United States, or both, satisfies all other applicable requirements of this subpart, and

(1) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, and

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS; or

(c) The good is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials.

§ 10.452 Exclusions.

A good will not be considered to be an originating good and a material will not be considered to be an originating material by virtue of having undergone:

(a) Simple combining or packaging operations; or

(b) Mere dilution with water or with another substance that does not materially alter the characteristics of the good or material.

§ 10.453 Treatment of textile and apparel sets.

Notwithstanding the specific rules specified in General Note 26(n), HTSUS, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be regarded as originating goods unless each of the goods in the set is an originating good or the non-originating goods in the set do not exceed 10 percent of the adjusted value of the set.

§ 10.454 Regional value content.

Where General Note 26, subdivision (n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good may be calculated, at the choice of the person claiming the tariff treatment authorized by this note for such good, on the basis of the build-down method or the build-up method described in this section, unless otherwise specified in the note.

(a) Build-down method. For the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV - VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VNM is the value of non-originating materials used by the producer in the production of the good; or

(b) Build-up method. For the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM /AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VOM is the value of originating materials used by the producer in the production of the good.

10.455 Value of materials.

(a) Calculating the regional value content. For purposes of calculating the regional value content of a good under General Note 26(n), HTSUS, and for purposes of applying the de minimis (see § 10.459) provisions of subdivision (e) of the note, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired in the territory where the good is produced, except for a material to which paragraph (a)(3) of this section applies, the producer's price actually paid or payable for the material;

(3) In the case of a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the sum of-

(i) All expenses incurred in the growth, production or manufacture of the material, including general expenses, and

(ii) A reasonable amount for profit; or

(4) In the case of a material that is self-produced, the sum of-

(i) All expenses incurred in the production of the material, including general expenses, and

(ii) A reasonable amount for profit.

(b) Adjustments to value. The value of materials may be adjusted as follows:

(1) For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the territory of Chile, the United States, or both, to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(2) For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the territory of Chile, the United States, or both, to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of Chile or of the United States.

(c) Accounting method. Any cost or value referenced in General Note 26(n), HTSUS and this subpart, must be recorded and main-

tained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Chile or the United States).

§ 10.456 Accessories, spare parts or tools.

Accessories, spare parts or tools that form part of the good's standard accessories, spare parts or tools and are delivered with the good will be treated as a material used in the production of the good, if–

(a) The accessories, spare parts or tools are classified with and not invoiced separately from the good; and

(b) The quantities and value of the accessories, spare parts or tools are customary for the good.

§ 10.457 Fungible goods and materials.

(a) A person claiming preferential tariff treatment under the US-CFTA for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method. For purposes of this subpart, the term "inventory management method" means–

(1) Averaging,

(2) "Last-in, first-out,"

(3) "First-in, first-out," or

(4) Any other method that is recognized in the generally accepted accounting principles of the country in which the production is performed (whether Chile or the United States) or otherwise accepted by that country.

(b) A person selecting an inventory management method under paragraph (a) of this section for particular fungible goods or materials must continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

§ 10.458 Accumulation.

(a) Originating goods or materials of Chile or the United States that are incorporated into a good in the territory of the other country will be considered to originate in the territory of the other country for purposes of determining the eligibility of the goods or materials for preferential tariff treatment under the US-CFTA.

(b) A good that is produced in the territory of Chile, the United States, or both, by one or more producers, will be considered as an originating good if the good satisfies the applicable requirements of § 10.451 and General Note 26, HTSUS.

§ 10.459 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant

to General Note 26(n), HTSUS will nonetheless be considered to be an originating good if–

(1) The value of all non-originating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of such non-originating materials is included in calculating the value of non-originating materials for any applicable regional value-content requirement under this note; and

(3) The good meets all other applicable requirements of General Note 26(n), HTSUS.

(b) Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System, that is used in the production of a good provided for in Chapter 4 of the Harmonized System;

(2) A non-originating material provided for in Chapter 4 of the Harmonized System, or non-originating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the Harmonized System, that are used in the production of the following goods: infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the Harmonized System; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the Harmonized System; dairy preparations containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System; goods provided for in heading 2105 of the Harmonized System; beverages containing milk provided for in subheading 2202.90 of the Harmonized System; or animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90 of the Harmonized System;

(3) A non-originating material provided for in heading 0805 of the Harmonized System or subheadings 2009.11 through 2009.30 of the Harmonized System that is used in the production of a good provided for in subheadings 2009.11 through 2009.30 of the Harmonized System, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheadings 2106.90 or 2202.90 of the Harmonized System;

(4) A non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514, or 1515 of the Harmonized System;

(5) A non-originating material provided for in heading 1701 of the Harmonized System that is used in the production of a good provided for in headings 1701 through 1703 of the Harmonized System;

(6) A non-originating material provided for in Chapter 17 or in heading 1805 of the Harmonized System that is used in the production of a good provided for in subheading 1806.10 of the Harmonized System;

(7) A non-originating material provided for in headings 2203 through 2208 of the Harmonized System that is used in the production of a good provided for in heading 2207 or 2208 of the Harmonized System; and

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this section.

(c) A textile or apparel good provided for in Chapters 50 through 63 of the Harmonized System that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. A good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, if a good is a fiber, yarn or fabric, the component of the good that determines the tariff classification of the good is all of the fibers in the yarn, fabric or group of fibers.

§ 10.460 Indirect materials.

An indirect material, as defined in § 10.402(n), will be considered to be an originating material without regard to where it is produced.

Example. Chilean Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.451(b)(1) and General Note 26(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.461 Retail packaging materials and containers.

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the US-CFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 26(n), HTSUS. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Chilean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.455(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC=((AV-VNM)/AV) × 100 (*see* § 10.454(a)), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, but the blister packages are originating. In this case, the adjusted value of the originating blister packages would not be included as part of the VNM of good C under the build-down method. However, if the United States importer had used the build-up method, RVC=(VOM/AV) × 100 (*see* § 10.454(b)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

10.462 Packing materials and containers for shipment.

(a) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS. Accordingly, such materials and containers do not have to undergo the applicable change in tariff classification even if they are non-originating.

(b) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying either the build-down or build-up method for determining the regional value content of the good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, or VOM, value of originating materials.

Example. Chilean Producer A produces good C. Producer A ships good C to the United States in a shipping container which it purchased from Company B in Chile. The shipping container is originating. The value of the shipping container determined under section § 10.455(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC= (VOM/AV) × 100 (*see* § 10.454(b)), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section requires a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100-$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.463 Transit and transshipment.

(a) General. A good will not be considered an originating good by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify as an originating good if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) Documentary evidence. An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

Origin Verifications and Determinations

§ 10.470 Verification and justification of claim for preferential treatment.

(a) Verification by CBP. A claim for preferential treatment made under § 10.410, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but is not limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, supporting accounting and financial records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence that documents the use of U.S. or Chilean materials in the production of the article subject to the verification, such as purchase orders, invoices, bills of lading and other shipping documents, customs import and clearance documents, and bills of material and inventory records.

(b) Applicable accounting principles. When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.471 Special rule for verifications in Chile of U.S. imports of textile and apparel products.

(a) Procedures to determine whether a claim of origin is accurate. For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by The Committee for the Implementation of Textile Agreements (CITA), which may include suspending the application of preferential treatment to the textile or apparel good for which a claim of origin has been made. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good, if directed by CITA.

(b) Procedures to determine compliance with applicable customs laws and regulations of the U.S. For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures in cases in which CBP has a reasonable suspicion that a Chilean exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. A "reasonable suspicion" for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that

indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. CBP may undertake or assist in a verification under this paragraph by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by CITA , which may include suspending the application of preferential tariff treatment to the textile and apparel goods exported or produced by the Chilean entity where the reasonable suspicion of unlawful activity relates to those goods. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to any textile or apparel goods exported or produced by the entity subject to the verification, if directed by CITA.

(c) Assistance by CBP to Chilean authorities. CBP may undertake or assist in a verification under this section by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States.

(d) Treatment of documents and information provided to CBP. Any production, trade and transit documents and other information necessary to conduct a verification under this section, provided to CBP by the government of Chile consistent with the laws, regulations, and procedures of Chile, will be considered confidential as provided for in Article 5.6 of the US-CFTA.

(e) Notification to Chile. Prior to commencing appropriate action under paragraph (a) or (b) of this section, CBP will notify the government of Chile. CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

(f) Retention of authority by CBP. If CBP requests a verification before Chile fully implements its obligations under Article 3.21 of the US-CFTA, the verification will be conducted principally by CBP, including through means described in paragraphs (a) and (b) of this section. CBP retains the authority to exercise its rights under paragraphs (a) and (b) of this section.

§ 10.472 Verification in the United States of textile and apparel goods.

(a) Procedures to determine whether a claim of origin is accurate. CBP will endeavor, at the request of the government of Chile, to conduct a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate. A verification will be

conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, Chile may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good.

(b) Procedures to determine compliance with applicable customs laws and regulations of Chile. CBP will endeavor to conduct a verification at the request of the government of Chile for purposes of enabling Chile to determine that the U.S. exporter or producer is complying with applicable customs laws, regulations, and procedures, if Chile has a reasonable suspicion that a U.S. exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment.. A "reasonable suspicion" for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, it may take action as permitted under its laws with respect to any textile or apparel goods exported or produced by the entity subject to the verification.

(c) Visits by CBP. CBP may conduct visits to the premises of a U.S. exporter or producer or any other enterprise involved in the movement of textile or apparel goods from the United States to Chile in order to undertake or assist in a verification pursuant to paragraphs (a) and (b) of this section.

(d) Initiation of verification by CBP. CBP may conduct, on its own initiative, a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate.

(e) Treatment of documents and information. CBP will endeavor to provide to the government of Chile, consistent with U.S. laws, regulations, and procedures, production, trade, and transit documents and other information necessary to conduct a verification under paragraphs (a) and (b) of this section. Such information will be considered confidential as provided for in Article 5.6 of the US-CFTA.

§ 10.473 Issuance of negative origin determinations.

If CBP determines, as a result of an origin verification initiated under this section, that the good which is the subject of the verification does not qualify as an originating good, it will issue a written determination that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based;

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 26, HTSUS, and in the "Rules of Origin" heading under this subpart, the legal basis for the determination; and,

(d) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination.

§ 10.474 Repeated false or unsupported preference claims.

Where CBP finds indications of a pattern of conduct by an importer of false or unsupported representations that a good imported into the United States qualifies as originating, CBP may deny subsequent claims for preferential tariff treatment on identical goods imported by that person until compliance with the rules applicable to originating goods as set forth in General Note 26, HTSUS is established to the satisfaction of CBP.

Penalties

§ 10.480 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the US-CFTA.

§ 10.481 Corrected declaration by importers.

A U.S. importer who makes a corrected declaration under § 10.410(b) will not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made.

§ 10.482 Corrected certifications of origin by exporters or producers.

Civil or administrative penalties provided for under the U.S. customs laws and regulations will not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 10.430(b) with respect to the making of an incorrect certification.

§ 10.483 Framework for correcting declarations and certifications.

(a) "Voluntarily" defined. For purposes of this subpart, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(1) Done before the commencement of a formal investigation; or

(2) Done before any of the events specified in § 162.74(i) of this part have occurred; or

(3) Done within 30 calendar days after either the U.S. importer, exporter or producer had reason to believe that the declaration or certification was not correct; and is

(4) Accompanied by a written statement setting forth the information specified in paragraph (c) of this section; and

(5) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (e) of this section.

(b) Cases involving fraud. Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect declaration or certification may not make a voluntary correction. For purposes of this paragraph, the term "fraud" will have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(c) Written statement. For purposes of this subpart, each corrected declaration or notification of an incorrect certification must be accompanied by a written statement which:

(1) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(2) In the case of a corrected declaration, identifies each affected import transaction, including each port of importation and the approximate date of each importation, and in the case of a notification of an incorrect certification, identifies each affected exportation transaction, including each port of exportation and the approximate date of each exportation. A U.S. producer who provides written notification that certain information in a certification of origin is incorrect and who is unable to identify the specific export transactions under this paragraph must provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(3) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional pertinent information or data which is unknown at the time of making the corrected declaration or

certification within 30 calendar days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) Substantial compliance. For purposes of this section, a person will be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (c) of this section, provided that:

(1) CBP is satisfied that the information was provided before the commencement of a formal investigation; and

(2) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (c) of this section.

(e) Tender of actual loss of duties. A U.S. importer who makes a corrected declaration must tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(f) Applicability of prior disclosure provisions. Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and § 162.74 of this Chapter.

Goods Returned After Repair or Alteration

§ 10.490 Goods re-entered after repair or alteration in Chile.

(a) General. This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Chile as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Chile, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, "repairs or alterations" means restoration, addition, renovation, re-dyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) Goods not eligible for treatment. The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Chile, are incomplete for their intended use and for which the processing operation performed in Chile constitutes an operation that is

performed as a matter of course in the preparation or manufacture of finished goods.

(c) Documentation. The provisions of § 10.8(a), (b), and (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Chile after having been exported for repairs or alterations and which are claimed to be duty free.

PART 24 - CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

12. The general authority citation for Part 24 is revised, and the specific authority for § 24.23 continues, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 et seq.).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332

* * * * *

13. Section 24.23 is amended by adding paragraphs (c)(6) and (c)(7) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(6) [Reserved]

(7) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States-Chile Free Trade Agreement Implementation Act (see also General Note 26, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

PART 162 - INSPECTION, SEARCH, AND SEIZURE

14. The authority citation for Part 162 continues to read in part as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

15. Section 162.0 is amended by adding a sentence at the end to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement are contained in Part 10, Subpart H of this chapter.

PART 163 - RECORDKEEPING

16. The authority citation for Part 163 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

17. Section 163.1(a)(2) is amended by re-designating paragraph (a)(2)(vi) as (a)(2)(vii) and adding a new paragraph (a)(2)(vi) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(vi) The completion and signature of a Chile FTA certification of origin and any other supporting documentation pursuant to the United States-Chile Free Trade Agreement.

* * * * *

18. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List.

* * * * *

IV. * * *

§ 10.410 US-CFTA Certification of origin and supporting records

* * * * *

PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

19. The authority citation for Part 178 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 et seq.

20. Section 178.2 is amended by adding new listings to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
* * * * *	* * * * *	* * * * *
§§ 10.410 and 10.411.	Claim for preferential tariff treatment under the US-Chile Free Trade Agreement	1651–0117
* * * * *	* * * * *	* * * * *

PART 191 - DRAWBACK

21. The general authority citation for Part 191 is revised to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

22. Section 191.0 is amended by adding a sentence at the end to read as follows:

§ 191.0 Scope.

* * * Those provisions relating to the United States-Chile Free Trade Agreement are contained in subpart H of part 10 of this chapter.

ROBERT C. BONNER,
Commissioner of Customs and Border Protection.

Approved: February 28, 2005

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 7, 2005 (70 FR 10868)]

DEPARTMENT OF THE TREASURY

19 CFR PART 12

[CBP Dec. 05–10]

RIN 1505–AB56

EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON CERTAIN CATEGORIES OF ARCHAEOLOGICAL MATERIAL FROM THE PREHISPANIC CULTURES OF THE REPUBLIC OF EL SALVADOR

AGENCY: Customs and Border Protection; Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) regulations to reflect the extension of the import restrictions on certain categories of archaeological material from the Prehispanic cultures of the Republic of El Salvador which were imposed by T.D. 95–20. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional 5 years, and the CBP regulations are being amended to indicate this extension. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 95–20 contains the Designated List of archaeological material representing Prehispanic cultures of El Salvador.

EFFECTIVE DATE: March 8, 2005.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Joseph Howard, (202) 572–8701. For operational aspects, Michael Craig, Chief, Other Government Agencies Branch, (202) 344–1684.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 et seq.), the United

States entered into a bilateral agreement with the Republic of El Salvador on March 8, 1995, concerning the imposition of import restrictions on certain categories of archeological material from the Prehispanic cultures of the Republic of El Salvador. On March 10, 1995, the United States Customs Service published T.D. 95–20 in the **Federal Register** (60 FR 13352), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of article covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are "effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists" (19 CFR 12.104g(a)).

On March 9, 2000, the United States Customs Service published T.D. 00–16 in the **Federal Register** (65 FR 12470), which amended 19 CFR 12.104g(a) to reflect the extension for an additional period of five years.

Sections 403(1) and 411 of the Homeland Security Act of 2002 (Pub. L. 107–296) transferred the United States Customs Service and certain of its functions from the Department of the Treasury to the Department of Homeland Security. Pursuant to § 1502 of the Act, the President renamed the "Customs Service" as the "Bureau of Customs and Border Protection," also referred to as the "CBP."

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluding that the cultural heritage of El Salvador continues to be in jeopardy from pillage of Prehispanic archaeological resources, made the necessary determinations to extend the import restrictions for an additional five years on February 2, 2005. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions. The Designated List of Archaeological Material Representing Prehispanic Cultures of El Salvador covered by these import restrictions is set forth in T.D. 95–20. The Designated List and accompanying image database may also be found at the following internet website address: http://exchanges.state.gov/culprop/esimage.html. The restrictions on the importation of these archaeological materials from the Republic of El Salvador are to continue in effect for an additional 5 years. Importation of such material continues to be restricted unless:

(1) Accompanied by appropriate export certification issued by the Government of the Republic of El Salvador; or

(2) With respect to Pre-Columbian material from archaeological sites throughout El Salvador, documentation exists that exportation from El Salvador occurred prior to March 10, 1995; or

(3) With respect specifically to Pre-Columbian material from the Cara Sucia archaeological region, documentation exists that exportation from El Salvador occurred prior to September 7, 1987.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

EXECUTIVE ORDER 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in Executive Order 12866.

SIGNING AUTHORITY

This regulation is being issued in accordance with 19 CFR 0.1(a)(2).

LIST OF SUBJECTS IN 19 CFR PART 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

AMENDMENT TO CBP REGULATIONS

For the reasons set forth above, part 12 of the CBP Regulations (19 CFR part 12), is amended as set forth below:

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.104g are revised to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for El Salvador by removing the reference to "T.D. 00–16" and adding in its place "CBP Dec. 05–10 " in the column headed "Decision No.".

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 9, 2005 (70 FR 11539)]

General Notices

PROPOSED COLLECTION; COMMENT REQUEST
Application to Payoff or Discharge Alien Crewman
(Form I–408)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burdens, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application to Pay Off or Discharge Alien Crewman (Form I–408). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and

Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application to Pay Off or Discharge Alien Crewman
OMB Number: 1651–0106
Form Number: I–408
Abstract: This form is used by owner, agent, consignee, master or commanding of any vessel or aircraft to obtain permission from CBP to pay off or discharge any alien crewman.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses or other for-profit institutions
Estimated Number of Respondents: 85,000
Estimated Time Per Respondent: 25 minutes
Estimated Total Annual Burden Hours: 35,360
Estimated Total Annualized Cost on the Public: $353,600

Dated: March 11, 2005

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 9, 2005 (70 FR 11685)]

PROPOSED COLLECTION; COMMENT REQUEST
Application for Waiver of Passport and/or Visa (Form I–193)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burdens, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to

comment on an information collection requirement concerning the Application for Waiver of Passport and/or Visa (Form I–193). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Waiver of Passport and/or Visa

OMB Number: 1651–0107

Form Number: I–193

Abstract: This information collection is used by CBP to determine an applicant's eligibility to enter the United States. This form is used by aliens who wish to waive the documentary requirements for passport's and/or visas due to an unforeseen emergency.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Individuals

Estimated Number of Respondents: 25,000

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 4,150
Estimated Total Annualized Cost on the Public: $4,916,500

Dated: March 2, 2005

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 9, 2005 (70 FR 11682)]

PROPOSED COLLECTION; COMMENT REQUEST
Automated Clearinghouse Credit

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Automated Clearinghouse Credit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the

use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Automated Clearinghouse Credit
OMB Number: 1651–0078
Form Number: N/A
Abstract: The information is to be used by CBP to send information to the company (such as revised format requirements) and to contact participating companies if there is a payment problem.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 65
Estimated Time Per Respondent: 3.8 hours
Estimated Total Annual Burden Hours: 249
Estimated Total Annualized Cost on the Public: $4395.85

Dated: March 1, 2005

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 9, 2005 (70 FR 11683)]

PROPOSED COLLECTION; COMMENT REQUEST
Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions

OMB Number: 1651–0067

Form Number: N/A

Abstract: This collection is used to ensure revenue collections and to provide duty free entry of merchandise eligible for reduced duty treatment under provisions of Harmonized Tariff Schedule of the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 19,433

Estimated Time Per Respondent: 45 minutes

Estimated Total Annual Burden Hours: 14,575
Estimated Total Annualized Cost on the Public: $353,715

Dated: March 1, 2005

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 9, 2005 (70 FR 11684)]

PROPOSED COLLECTION; COMMENT REQUEST
Drawback Process Regulations and Entry Collection Documents

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Drawback Process Regulations and Entry Collection Documents. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the

use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Drawback Process Regulations and Entry Collection Documents.

OMB Number: 1651–0075

Form Number: Forms CBP–7551, 7552, 7553,

Abstract: The information is to be used by CBP officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 8,150

Estimated Time Per Respondent: 11 hours

Estimated Total Annual Burden Hours: 90,000

Estimated Total Annualized Cost on the Public: $3,098,405.86

Dated: March 1, 2005

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 9, 2005 (70 FR 11683)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, March 9, 2005,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

19 CFR PART 177

PROPOSED REVOCATION OF TREATMENT AND MODIFICATION OR REVOCATION, AS APPROPRIATE, OF RULINGS RELATING TO TARIFF CLASSIFICATION OF FLAME CUT NONALLOY STEEL CIRCLES

AGENCY: U. S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice of proposed revocation of treatment and modification or revocation, as appropriate, of rulings relating to tariff classification of flame cut nonalloy steel circles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke the treatment received by the importer subject to proposed Headquarters Ruling (HQ) 967410, and modify or revoke, as appropriate, any rulings concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain flame cut nonalloy steel circles. These are disc-shaped articles oxyacetylene flame cut from hot-rolled steel plates. After importation, they are heated, then spun into tank heads for use on pressure vessel tank cars for the rail industry and general purpose tanks for the conveyance of water, gas, etc. Similarly, CBP proposes to revoke any other treatment it has previously accorded to substantially identical transactions of other importers. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before April 22, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20220, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572–8779.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke the treatment concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of disc-shaped circles oxyacetylene flame cut from hot-rolled nonalloy steel plates, for use as tank heads in the manner described above which was accorded to the importer identified in proposed HQ 967410. In addition, under section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this proposal covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken

reasonable efforts to search existing data bases for rulings on this merchandise. No rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any other treatment it previously accorded to substantially identical transactions of other importers. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision on this notice. Under the above-referenced treatment, the disc-shaped circles produced as described from nonalloy steel plates, were classifiable as other articles of iron or steel, forged or stamped but not further worked, in subheading 7326.19.00, HTSUS. It is now CBP's position that these disc-shaped circles are classifiable in subheading 7208.90.00, HTSUS, as other flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated.

CBP intends to revoke the treatment concerning the classification of this merchandise, as well as any rulings on the merchandise to reflect the proper classification of the goods pursuant to the analysis in proposed HQ 967410, which is set forth as the Attachment to this document. Additionally, CBP intends to revoke any other treatment it has previously accorded to substantially identical transactions of other importers. Before taking this action, we will give consideration to any written comments timely received.

DATED: March 7, 2005

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967410
CLA–2 RR:CR:GC 967410 JAS
CATEGORY: Classification
TARIFF NO.: 7208.90.0000

BARBARA DAWLEY, ESQ.
MEEKS & SHEPPARD
1735 Post Road, Suite 4
Fairfield, CT 06824

RE: Revocation of Treatment; Flame Cut Nonalloy Steel Circles

DEAR MS. DAWLEY:

This is in reference to your letter of October 14, 2004, on behalf of World Metals Corporation, which supplements an Application for Further Review of Protest 1101–04–100162, timely filed at the Port of Philadelphia on May 20, 2004. At issue is the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain flame cut circles of iron or nonalloy steel.

You contend that this merchandise has been imported by your client at various ports over an extended period of time under the provision for other articles of iron or steel, forged or stamped, but not further worked, in subheading 7326.19.00, HTSUS, and the entries uniformly liquidated under this provision. Thus, in your opinion a treatment for these goods exists with respect to your client's transactions which cannot be modified or revoked except upon compliance with section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103–82, 107 Stat. 2057, 2186). CBP believes that this treatment accorded your client is in error and we intend to revoke it.

FACTS:

The merchandise at issue is steel circle blanks, products of Brazil. They are disc-shaped articles which are oxyacetylene flame cut from hot-rolled steel plates. After importation, they are heated, then spun into tank heads for use on pressure vessel tank cars for the rail industry and general purpose tanks for the conveyance of water, gas, etc.

Beginning in 1998, World Metals had sought to import the merchandise under a provision in heading 7208, HTSUS, for other flat-rolled products of iron or nonalloy steel. However, CBP advised World Metals that a provision in heading 7326, HTSUS, for other articles of iron or steel, forged or stamped, but not further worked, represented the correct classification.

The HTSUS provisions under consideration are as follows:

7208	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated:
7208.90.00	Other

* * * *

7326	Other articles of iron or steel: Forged or stamped, but not further worked:
7326.19.00	Other

ISSUE:

Whether the steel circle blanks, processed as indicated, are goods of heading 7208; whether CBP has accorded a treatment to World Metals Corporation for the classification of these goods under subheading 7326.19.00.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The original determination that the flame cut steel circles were provided for in subheading 7326.19.00, HTSUS, was based on the belief that the goods were, in fact, made by a stamping process in accordance with Motor Wheel Corp. v. United States, 19 CIT 385 (1995). In that case, the Court found that circular or octagonal shapes cut from flat-rolled steel by an automated cookie cutter process sufficiently advanced the flat-rolled steel such that the resulting blank, created in a single press stroke as by a stamp, is distinct from the flat-rolled steel and had, in fact, become a stamped article of iron or steel, described by subheading 7326.19.00, HTSUS. The steel circle blanks at issue here, which are oxyacetylene flame cut from hot-rolled steel plates, are not produced by a recognized stamping process and, therefore, are not stamped articles of the type classifiable in subheading 7326.19.00, HTSUS. They remain flat-rolled products of iron or non-alloy steel, classifiable in subheading 7208.90.00, HTSUS.

As to the claim of treatment under subheading 7326.19.00 for World Metals importations, Section 177.12(c), CBP Regulations, sets forth the rules for determining under that section whether a treatment was previously accorded by CBP to substantially identical transactions of a person. These rules involve, among other things, an actual determination by a CBP officer regarding the facts and issues involved in the claimed treatment, the CBP officer being responsible for the subject matter on which the determination was made, and over a 2-year period immediately preceding the claim of treatment, CBP consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other CBP actions with respect to all or substantially all of that person's CBP transactions involving materially identical facts and issues. The determination of whether the requisite treatment occurred will be made by CBP on a case-by-case basis and will involve an assessment of all relevant factors.

The claim of treatment for World Metals importations is made in a Memorandum of Law, filed in support of Protest 1101–04–100162, timely filed with the Port Director, Philadelphia, on May 20, 2004. The record indicates that beginning in April of 1998, these circle blanks were sought to be entered at the Port of Hartford, CT, under the provisions of subheading 7208.90.00, Harmonized Tariff Schedule of the United States (HTSUS), as other flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated. A Notice of Action, dated April 16, 1998, advised that the correct classification was under subheading 7326.19.00, HTSUS, as other articles of iron or steel, forged or stamped, but not further worked, eligible duty-free, as products of Brazil, under the Generalized System of Preferences (GSP). Additional communication followed in the form of a letter, dated May 8, 1998, in which the Port confirmed that subheading 7326.19.00, HTSUS, was the correct classification. Six entries of

this merchandise followed at Hartford from June of 1998 through and including July of 1999, all of which liquidated under subheading 7326.19.00, HTSUS. Numerous additional entries of the merchandise liquidated at the Ports of Houston and Philadelphia from May of 1998 through and including April of 2003 under subheading 7326.19.00, HTSUS.

Upon the facts presented, we conclude under Section 177.12(c), CBP Regulations, that a treatment does, in fact, exist in classifying World Metals importations as steel circle blanks which are oxyacetylene flame cut from hot-rolled steel plates, in subheading 7326.19.00, HTSUS.

HOLDING:

Under the authority of GRI 1, steel circle blanks which are oxyacetylene flame cut from hot-rolled steel plates, are provided for in heading 7208. They are classifiable as other flat-rolled products of iron or nonalloy steel, in subheading 7208.90.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The 2004 general rate of duty is Free. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

Pursuant to 19 U.S.C. 1625(c)(1), the treatment previously accorded World Metals importations of this merchandise is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PUMPKIN CARVING SETS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to the tariff classification of pumpkin carving sets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking four ruling letters and modifying four ruling letters pertaining to the tariff classification of pumpkin carving sets under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed actions was published

on January 5, 2005 in the CUSTOMS BULLETIN, Volume 39, Number 2. Two comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 22, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572–8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, CBP published a notice in the January 5, 2005 CUSTOMS BULLETIN, Volume 39, Number 2, proposing to revoke New York Ruling Letters (NY) H80987, dated June 4, 2001; NY H81051, also dated June 4, 2001; NY G81860, dated September 27, 2000; NY I89059, dated December 16, 2002; and modify NY G87300, dated March 14, 2001; NY G87214, dated March 15, 2001; NY J81070 dated February 20, 2003 and NY J82021, dated April 10, 2003, and to revoke any treatment accorded to substantially identical transactions regarding the tariff classification of pumpkin carving sets. Two comments were received against the proposed actions, which will be addressed in the attached rulings.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifi-

cally identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice.

In the aforementioned rulings CBP had determined that the subject pumpkin carving sets were classifiable as goods put up in sets for retail sale under GRI 3(b), HTSUS, but that the sets could not be classified according to GRI 3(b) because no component in the set imparted the essential character of the set. Therefore, the sets were classified according to GRI 3(c) by the component occurring last in numerical order among the competing headings which equally merit consideration. It is now CBP's position that resort to GRI 3(c) was improper, as the carving knife or tool imparts the essential character of the pumpkin carving sets. Therefore, the pumpkin carving sets are classified according to GRI 3(b).

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY H80987, NY H81051, NY G87300, NY J81070, modifying NY G81860, NY I89059, NY G87214 and NY J82021 and modifying or revoking, as appropriate, any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 966981, HQ 967376, HQ 967377, HQ 967378 and HQ 967379 (Attachments A through E, respectively), each of which revoke and/or modify one or more of the aforementioned rulings. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), these rulings will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 7, 2005

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966981
March 7, 2005
CLA–2 RR: CR: GC 966981 DBS
CATEGORY: Classification
TARIFF NO.: 8211.92.4060

MS. DONNA M. DION
CVS PHARMACY
One CVS Drive
Woonsocket, RI 02895

RE: Revocation of NY H80987 and H81051; Pumpkin Carving Sets

DEAR MS. DION:

On June 4, 2001, the Director, National Commodity Specialist Division, issued to you New York Ruling Letters (NY) H80987 and H81051, classifying pumpkin carving kits in subheading 9608.20.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), according to General Rule of Interpretation (GRI) 3(c). We have reviewed these rulings and found them to be incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified rulings was published on January 5, 2005, in the CUSTOMS BULLETIN, Volume 39, Number 2. Two comments were received in response to the notice. The concerns raised are addressed herein.

FACTS:

NY H80987 classified the Model 895 pumpkin carving kit. It contains a carving knife, a plastic scraper, a felt tipped pen, two glitter glue pens, and paper stencils. NY H81051 classified the Model 892 pumpkin carving kit. It contains two carving knives, a plastic scraper, a felt tipped pen, and paper stencils. Both items are packaged for retail sale. In both rulings, it was determined no component in the sets imparted the essential character. Therefore, they were classified according to GRI 3(c) by the component occurring last in numerical order among the competing headings which equally merit consideration.

ISSUE:

Whether the pumpkin carving kits have an essential character for purposes of classification according to GRI 3(b).

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be uti-

lized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

NY H80987 and NY H81051 correctly concluded that the kits at issue constituted "goods put up in sets for retail sale" according to GRI 3(b). GRI 3(b) provides, in relevant part, that such sets are classified by the component that imparts the essential character of the set. If the essential character cannot be determined, GRI 3(c) provides that the set will fall to be classified in the heading that occurs last in numerical order among those which equally merit consideration. GRI 3(c) applies only where GRI 3(a) and GRI 3(b) fail. *See* EN to GRI 3. Both rulings stated that no single component in the kits imparted the essential character, and classified the sets by GRI 3(c) under heading 9608, HTSUSA, which was the last heading among the various items in each set. The application of GRI 3(c) was consistent with several rulings on pumpkin carving kits. However, we now believe the essential character can be determined, and resort to GRI 3(c) is not necessary.

EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods." Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. *See, e.g., Better Home Plastics Corp. v. U.S.*, 916 F. Supp. 1265 (CIT 1996), *aff'd* 119 F. 3d 969 (Fed. Cir. 1997) *Mita Copystar America, Inc. v. U.S.*, 966 F. Supp. 1245 (CIT 1997), *rehear'g denied*, 994 F. Supp. 393 (CIT 1998), *rev'd on other grounds* 160 F. 3d 710 (Fed. Cir. 1998); *see also Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *aff'd* 171 F.3d 1370 (Fed. Cir. 1999).

Better Home Plastics involved the classification of shower curtain sets. In holding that the set was classified in heading 3924, HTSUS, which provided for the plastic liner, the Court of International Trade relied largely on previous decisions in which the essential character was the component that was indispensable to the function of the good. *See United States v. Canadian Vinyl Industries, Inc.*, 64 C.C.P.A. 97, C.A.D. 1189, 555 F.2d 806 (1977); *see also United China & Glass v. United States*, 61 Cust. Ct. 386, 389, 293 F. Supp. 734, 737, Cust. Dec. 3637 (1968) (noting essential character is that attribute "which is indispensable to the structure, core or condition of the article, i.e., what it is."). It reasoned that the utilitarian role of a shower liner, that is, preventing the escape of water, protecting the curtain from mildew and soap scum, and providing privacy, is more important than the decorative value of the inexpensive and partially transparent textile curtain sold with it.

The primary purpose of a pumpkin carving kit is to carve designs, such as a jack o' lantern face, into a pumpkin. Although it may not predominate in bulk, weight or value, the carving knife fulfills this purpose. A pumpkin cannot be carved into a jack o' lantern by a pen or stencils or glue or a scoop. Moreover, the other components contribute to the use of the carving knife or accent the carved designs. However, without the other articles, the knife can still be used to carry out the kit's purpose of carving a design into a pumpkin. It is the knife that is indispensable to the set. Therefore, the utility of

the knife in relation to the use of the set predominates over the remaining goods just as the plastic liner predominated over the curtain in *Better Home Plastics*.

Comments opposing the proposed action to revoke NY H80987 and H81051 and CBP's treatment of pumpkin carving sets argued that, unlike the set in *Better Home Plastics* in which the court determined that liner served the purpose of the whole set, here a consumer must use each of the items in these sets to complete the decorating process. It was further argued that the attraction of the sets is the other products in the set, as carving tools may be purchased individually, and are sold next to the sets in a retail store. Both of the commentors suggest that, in light of the foregoing, stencils (or the like) impart the essential character of the set, or at least are equally important. We have considered these and other arguments raised in the comments and disagree. In these instances, stencils do not decorate the pumpkin, their designs must be carved into the pumpkin, making them less essential to the set than the carving tool.

As the essential character of the instant sets is imparted by the carving knife, the instant pumpkin carving sets are classified according to GRI 3(b) in subheading 8211.92.4060, HTSUSA, which provides for other knives having fixed blades with rubber or plastic handles. Where the appropriate provision in Chapter 82 carries a specific or compound rate of duty in addition to the *ad valorem* rate, as it does here, the specific or compound rate is applied to each of the items in a set. *See* HQ 088521, dated May 13, 1991, and Informed Compliance Publication, *Classification of Sets Under HTSUS*, updated March 2004, p. 19.

In addition to the rulings at issue above, we reviewed other rulings issued to other importers or their representatives on pumpkin carving kits. Many of them held the kits were classified by the carving instrument, whether it was a knife of heading 8211, HTSUSA, or other hand tools of heading 8205, HTSUSA, but employed GRI 3(c) to resolve the classification. As the holding is correct but the analysis is not, the rulings need not be modified pursuant to 19 U.S.C. §1625(c). However, the analysis in the following rulings needs to be corrected: NY I89205, dated November 19, 2002; NY G87082, dated February 26, 2001; NY 818260, dated February 9, 1996; NY 807079, dated March 2, 1995; NY 817821, dated January 22, 1996; NY 899065, dated June 22, 1994 and NY 815629, dated October 19, 1995. The analysis set forth to classify several models of pumpkin carving kits in NY G81860, dated September 27, 2000, also require modification, but as other models in the ruling require new classifications, the analysis will be modified in a separate ruling pursuant to 19 U.S.C. §1625(c).

We note that certain exceptions to the analysis set forth above apply on a case-by-case basis. NY B85472, dated June 5, 1997, classified a pumpkin carving kit consisting of a plastic "Erie Eyeball Maker," plastic scoop and saw with a metal blade and plastic handle, in subheading 8211.92.4060, HTSUSA, by GRI 3(c). In that case, making eyeballs and sawing the pumpkin both accomplish the primary purpose of carving designs into the pumpkin, and are therefore equally essential to that particular set. Application of GRI 3(c) was appropriate.

In the proposed action, we also determined that GRI 3(c) was also properly applied to NY F83018, dated February 22, 2000, which classified Pumpkin Party Deluxe Carve and Stencil Kit in subheading 8524.39.8000, HTSUS. The set included a CD-ROM that generated stencils on a computer.

We stated stencil making and pumpkin carving are equally important in relation to the use of that set. One commentor stated that the CD-ROM was not interactive, that it simply contained stencil designs to be printed out. As this was similar to any other stencil, the exception was not clear.

NY F83018 states that the user can "produce pictorial stencils generated from the CD-ROM program application." While the commentor's interpretation of this statement appears as equally plausible as ours, the National Commodity Specialist Division, issuer of the ruling, verified that the CD-ROM was in fact interactive. One could create stencils, but could also use preprogrammed stencils. Thus, the use of this good is not simply to carve decorations, but create that which is to be carved. We have re-evaluated our position in light of this information and herein affirm our initial determination.

The commentor further argued that applying GRI 3(c) provides certainty for importers in classifying these sets, whereas case-by-case determinations create confusion. While it would be simpler and more efficient for both importers and CBP to apply GRI 3(c) in all set cases, it is inconsistent with the laws of tariff classification, specifically GRI 3. The sections of GRI 3 are applied hierarchically. GRI 3(c) is the last resort, to be used only if we are unable to determine the essential character. Upon reconsideration, we were able to determine the essential character of the sets we reviewed. Therefore, we need not resort to GRI 3(c) for most pumpkin carving sets.

Classifying a "set for retail sale" (or composite good) by its essential character is the legal fiction created by GRI 3(b). *See The Pomeroy Collection, Inc. v. United States*, 246 F. Supp. 2d 1286, 1294 (CIT 2002), *a'ffd by Pomeroy*, 336 F.3d 1370 (Fed. Cir. 2003). Whether a group of goods is classifiable as a set, and, if so, by which component, are determinations that depend upon the various factors enumerated above. The determinations are innately "case-by-case." Though a pattern of classification often emerges where goods have similar components, as many of the aforementioned sets do, the GRIs must be applied in all instances.

HOLDING:

At GRI 3(b), the Model 895 and Model 892 pumpkin carving kits are classified in subheading 8211.92.4060, HTSUSA, which provides for "Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Other knives having fixed blades: With rubber or plastic handles: Other: Other." The 2005 rate of duty is 1¢ each + 4.6% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY H80987 and NY H81051, dated June 4, 2001, are hereby REVOKED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. As this time frame is determined by statute, CBP cannot delay the effective date.

Though the classification remains unchanged, the analysis of the following rulings is hereby modified in accordance with the LAW AND ANALYSIS above as follows with respect to the specifically enumerated products:

Ruling Number
Issue Date
To Whom Addressed
Product identification

NY I89205
November 19, 2002
Paper Magic Group, Inc
Item # 6520210 "Be Neat and Carve" pumpkin carving kit

NY G87082
February 26, 2001
Expeditors International of Washington, Inc. on behalf of Pumpkin LTD, d/b/a Pumpkin Masters
Sparkling Pumpkin Jewels pumpkin carving kit

NY 818260
February 9, 1996
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc.
"Carve & Candle Kit" and "Tools for Ghouls- Pumpkin Carving Kit"

NY 807079
March 2, 1995
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc
"Creative Pumpkin Carver," "Carve & Candle Kit" and "Tools for Ghouls- Pumpkin Carving Kit"

NY 817821
January 22, 1996
Four Star International Trading Company
"4-piece pumpkin carving kit"

NY 899065
June 22, 1994
Sunstar Industries, Inc.
"7-piece Halloween Pumpkin Carving Kit"

NY 815629
October 19, 1995
Circle International, Inc. on behalf of Sunhill Industries, Inc.
"Pumpkin carving kit"

James A. Seal for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967376
March 7, 2005
CLA–2 RR: CR: GC 967376 DBS
CATEGORY: Classification
TARIFF NO.: 8211.92.4060; 8205.51.3030; 8205.51.3060

MR. BOB BRESNAHAN
PUMPKIN LTD D.B.A. PUMPKIN MASTERS
P.O. Box 44068
Denver, CO 80201

RE: Modification of NY G81860 and NY I89059; Modification of analysis of NY G87082; Pumpkin Carving Sets

DEAR MR. BRESNAHAN:

On September 27, 2000, the Director, National Commodity Specialist Division (NCSD), issued to your agent, Expeditors International of Washington, New York Ruling Letter (NY) G81860, classifying five pumpkin carving kits under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) according to General Rule of Interpretation (GRI) 3(c). On December 16, 2002, NY I89059, classifying, among other goods, the pumpkin "Sculpt & Dye Kit" under the HTSUSA according to GRI 3(c), was issued to you. We have reviewed these rulings and found each of them to be incorrect, in part. This ruling sets forth the correct classification. In addition, please note that the analysis of NY G87082, dated February 26, 2001, also issued on your behalf, is modified herein.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified rulings was published on January 5, 2005, in the CUSTOMS BULLETIN, Volume 39, Number 2. Two comments were received in response to the notice. The concerns raised are addressed herein.

FACTS:

The merchandise classified in NY G81860 is described as follows, all five having been determined to be classifiable as goods put up in sets for retail sale, according to GRI 3(b):

Item #1 is called "Easy Carve." This pumpkin carving kit consists of: 5 different stick on patterns, 1 tea candle, 1 small plastic scoop, used to scoop the insides of the pumpkin out, or to skin the pumpkin, 1 small cutting implement (durasaw) to carve the pumpkin, and 1 small plastic poker to push the pattered pieces out of the pumpkin. It will be used for sculpting rather than carving pumpkins for celebrating the Halloween Holiday. Easy Carve was classified in subheading 8211.92.4060, HTSUSA, the provision for the durasaw.

Item #2 is called a Sculpting Kit. The kit consists of 8 paper patterns, 1 plastic poker, 1 plastic handled steel tie skinner, 1 plastic handled steel v cutter, and 1 plastic handled steel raker. It will be used for sculpting rather than carving pumpkins for celebrating the Halloween Holiday. This set was classified in subheading 8205.51.3060, HTSUSA, a provision for hand tools.

Item #3 is called a Punch Out Kit. The kit consists of 1 plastic scoop, 1 wooden mallet, and 2 tin plated steel pumpkin cutters (deep cookie cutters). It will be used to create and design a Halloween Holiday decoration, using a pumpkin, rather than carving. Plus when an inside light is used the design will decorate the walls. It was classified in subheading 8205.51.3030, HTSUSA, a provision for hand tools.

Item #4 is called a Kid's Carving Kit. The kit consists of 1 durasaw, 1 plastic poker, 1 crayon, 1 plastic scoop and 4 color-on patterns for design. It will be used for carving and for decorating pumpkins during the Halloween Holidays. Item #5 is called the Family Fun Pak. It consists of 4 patterns for pumpkin design, 2 sets of stickers, 2 crayons, 2 durasaws, 2 small paint brushes, 1 set of paints consisting of 6 different colors, 1 plastic scoop, and 1 plastic poker. It will be used for designing pumpkins during the Halloween Holidays. Both of these sets were classified in subheading 9609.90.8000, HTSUSA, which provides for pencils.

NY I89059, among other items, described the Sculpt & Dye Kit as consisting of a pumpkin decorating set comprised of 2 plastic handle sculpting tools with metal tips, 1 plastic poker, 1 plastic paint brush, and 2 dye tablets (red and green). The articles are used together to sculpt the pumpkin and the dye tablets are used to dye the carved designs. The item is packaged on a cardboard hang card, and considered a set for Customs' purposes. The set was classified in subheading 9603.30.2000, HTSUSA, which provides for brushes.

In both rulings, it was determined no component in the set imparted the essential character. Therefore, they were classified according to GRI 3(c) by the component occurring last in numerical order among the competing headings which equally merit consideration.

ISSUE:

Whether the pumpkin carving kits have an essential character for purposes of classification according to GRI 3(b).

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

NY G81860 and NY I89059 correctly concluded that the kits at issue constituted "goods put up in sets for retail sale" according to GRI 3(b). GRI 3(b) provides, in relevant part, that such sets are classified by the component that imparts the essential character of the set. If the essential character cannot be determined, GRI 3(c) provides that the set will fall to be classified in the heading that occurs last in numerical order among those which equally merit consideration. GRI 3(c) applies only where GRI 3(a) and GRI

3(b) fail. *See* EN to GRI 3. Both rulings stated that no single component in the kits imparted the essential character, and classified the sets by GRI 3(c) under the various subheadings identified in the FACTS section of this ruling, which, for each set, was the last subheading among the various items in each set. The application of GRI 3(c) was consistent with several rulings on pumpkin carving kits. However, we now believe the essential character can be determined, and resort to GRI 3(c) is not necessary.

EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods." Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. *See, e.g., Better Home Plastics Corp. v. U.S.*, 916 F. Supp. 1265 (CIT 1996), *aff'd* 119 F. 3d 969 (Fed. Cir. 1997) *Mita Copystar America, Inc. v. U.S.*, 966 F. Supp. 1245 (CIT 1997), *rehear'g denied*, 994 F. Supp. 393 (CIT 1998), *rev'd on other grounds* 160 F. 3d 710 (Fed. Cir. 1998); *see also Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *aff'd* 171 F.3d 1370 (Fed. Cir. 1999).

Better Home Plastics involved the classification of shower curtain sets. In holding that the set was classified in heading 3924, HTSUS, which provided for the plastic liner, the Court of International Trade relied largely on previous decisions in which the essential character was the component that was indispensable to the function of the good. *See United States v. Canadian Vinyl Industries, Inc.*, 64 C.C.P.A. 97, C.A.D. 1189, 555 F.2d 806 (1977); *see also United China & Glass v. United States*, 61 Cust. Ct. 386, 389, 293 F. Supp. 734, 737, Cust. Dec. 3637 (1968) (noting essential character is that attribute "which is indispensable to the structure, core or condition of the article, i.e., what it is."). It reasoned that the utilitarian role of a shower liner, that is, preventing the escape of water, protecting the curtain from mildew and soap scum, and providing privacy, is more important than the decorative value of the inexpensive and partially transparent textile curtain sold with it.

The primary purpose of a pumpkin carving kit is to carve designs, such as a jack o' lantern face, into a pumpkin. Although it may not predominate in bulk, weight or value, the carving knife (durasaw) fulfills this purpose. A pumpkin cannot be carved into a jack o' lantern by a pen or paint brushes or a scoop. Moreover, the other components contribute to the use of the carving knife/carving tool or accent the carved designs. However, without the other articles, the knife/carving tool can still be used to carry out the kits' purpose of carving a design into a pumpkin. It is the knife or carving tool that is indispensable to a pumpkin carving set. Therefore, the utility of the knife/carving tool in relation to the use of the set predominates over the remaining goods just as the plastic liner predominated over the curtain in *Better Home Plastics*.

Comments opposing the proposed action to modify NY G81860 and NY I89059 and revoke CBP's treatment of pumpkin carving sets argued that, unlike the set in *Better Home Plastics* in which the court determined that liner served the purpose of the whole set, here a consumer must use each of the items in these sets to complete the decorating process. It was further argued that the attraction of the sets is the other products in the set, as carving tools may be purchased individually, and are sold next to the sets in a

retail store. Both of the commentors suggest that, in light of the foregoing, stencils (or the like) impart the essential character of the set, or at least are equally important. We have considered these and other arguments raised in the comments and disagree. In these instances, stencils do not decorate the pumpkin, their designs must be carved into the pumpkin, making them less essential to the set than the carving tool.

As the essential character of the instant sets is imparted by the carving knife or handtool, the instant pumpkin carving sets are classified according to GRI 3(b) in subheading 8211.92.40, HTSUS, which provides for other knives having fixed blades with rubber or plastic handles, or subheading 8205.51.30, HTSUS, which provides for other household handtools not elsewhere specified or included, as provided below. Where the appropriate provision in Chapter 82 carries a specific or compound rate of duty in addition to the *ad valorem* rate, as it does here, the specific or compound rate is applied to each of the items in a set. *See* HQ 088521, dated May 13, 1991, and Informed Compliance Publication, *Classification of Sets Under HTSUS*, updated March 2004, p. 19.

In addition to the rulings at issue above, we reviewed other rulings issued to other importers or their representatives on pumpkin carving kits. Many of them held the kits were classified by the carving instrument, whether it was a knife of heading 8211, HTSUSA, or other hand tools of heading 8205, HTSUSA, but employed GRI 3(c) to resolve the classification. As the holding is correct but the analysis is not, the rulings need not be modified pursuant to 19 U.S.C. §1625(c). However, the analysis in the following rulings needs to be corrected: NY I89205, dated November 19, 2002; NY G87082, dated February 26, 2001; NY 818260, dated February 9, 1996; NY 807079, dated March 2, 1995; NY 817821, dated January 22, 1996; NY 899065, dated June 22, 1994 and NY 815629, dated October 19, 1995. The analysis set forth to classify several models of pumpkin carving kits in NY G81860, dated September 27, 2000, also require modification, but as other models in the ruling require new classifications, the analysis will be modified in a separate ruling pursuant to 19 U.S.C. §1625(c).

We note that certain exceptions to the analysis set forth above apply on a case-by-case basis. NY B85472, dated June 5, 1997, classified a pumpkin carving kit consisting of a plastic "Erie Eyeball Maker," plastic scoop and saw with a metal blade and plastic handle, in subheading 8211.92.4060, HTSUSA, by GRI 3(c). In that case, making eyeballs and sawing the pumpkin both accomplish the primary purpose of carving designs into the pumpkin, and are therefore equally essential to that particular set. Application of GRI 3(c) was appropriate.

In the proposed action, we also determined that GRI 3(c) was also properly applied to NY F83018, dated February 22, 2000, which classified Pumpkin Party Deluxe Carve and Stencil Kit in subheading 8524.39.8000, HTSUS. The set included a CD-ROM that generated stencils on a computer. We stated stencil making and pumpkin carving are equally important in relation to the use of that set. One commentor stated that the CD-ROM was not interactive, that it simply contained stencil designs to be printed out. As this was similar to any other stencil, the exception was not clear.

NY F83018 states that the user can "produce pictorial stencils generated from the CD-ROM program application." While the commentor's interpretation of this statement appears as equally plausible as ours, the National Commodity Specialist Division, issuer of the ruling, verified that the CD-

ROM was in fact interactive. One could create stencils, but could also use preprogrammed stencils. Thus, the use of this good is not simply to carve decorations, but create that which is to be carved. We have re-evaluated our position in light of this information and herein affirm our initial determination.

The commentor further argued that applying GRI 3(c) provides certainty for importers in classifying these sets, whereas case-by-case determinations create confusion. While it would be simpler and more efficient for both importers and CBP to apply GRI 3(c) in all set cases, it is inconsistent with the laws of tariff classification, specifically GRI 3. The sections of GRI 3 are applied hierarchically. GRI 3(c) is the last resort, to be used only if we are unable to determine the essential character. Upon reconsideration, we were able to determine the essential character of the sets we reviewed. Therefore, we need not resort to GRI 3(c) for most pumpkin carving sets.

Classifying a "set for retail sale" (or composite good) by its essential character is the legal fiction created by GRI 3(b). *See The Pomeroy Collection, Inc. v. United States*, 246 F. Supp. 2d 1286, 1294 (CIT 2002), *a'ffd by Pomeroy*, 336 F.3d 1370 (Fed. Cir. 2003). Whether a group of goods is classifiable as a set, and, if so, by which component, are determinations that depend upon the various factors enumerated above. The determinations are innately "case-by-case." Though a pattern of classification often emerges where goods have similar components, as many of the aforementioned sets do, the GRIs must be applied in all instances.

HOLDING:

At GRI 3(b), the "Easy Carve" set, "Kid's Carving Kit" and "Family Fun Pak" pumpkin carving kits are classified in subheading 8211.92.4060, HTSUSA, which provides for "Knifes with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Other knives having fixed blades: With rubber or plastic handles: Other: Other." The 2005 rate of duty is 1¢ each + 4.6% *ad valorem*. As stated in NY G81860, the candle in the Easy Carve kit is subject to the determination by the U.S. Department of Commerce that petroleum wax candles in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers and tea light candles are within the scope of the antidumping duty order on petroleum wax candles from China.

At GRI 3(b), the "Punch Out Kit" is classified in subheading 8205.51.3030, HTSUSA, which provides for "Handtools (including glass cutters) not elsewhere specified or included . . . : Other handtools . . . : Household tools, and parts thereof: Of iron or steel: Other (including parts): Kitchen and table implements." The 2005 rate of duty is 3.7% *ad valorem*.

At GRI 3(b), the "Sculpting Kit," "Sculpt & Dye Kit" are classified in subheading 8205.51.3060, HTSUSA, which provides for "Handtools (including glass cutters) not elsewhere specified or included . . . : Other handtools . . . : Household tools, and parts thereof: Of iron or steel: Other (including parts): Other." The 2005 rate of duty is 3.7% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY G81860, dated September 27, 2000, and NY I89059, dated December 16, 2002, are hereby MODIFIED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. As this time frame is determined by statute, CBP cannot delay the effective date.

Though the classification remains unchanged, the analysis of the following rulings is hereby modified in accordance with the LAW AND ANALYSIS above as follows with respect to the specifically enumerated products:

Ruling Number
Issue Date
To Whom Addressed
Product identification

NY I89205
November 19, 2002
Paper Magic Group, Inc
Item # 6520210 "Be Neat and Carve" pumpkin carving kit

NY G87082
February 26, 2001
Expeditors International of Washington, Inc. on behalf of Pumpkin LTD, d/b/a Pumpkin Masters
Sparkling Pumpkin Jewels pumpkin carving kit

NY 818260
February 9, 1996
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc.
"Carve & Candle Kit" and "Tools for Ghouls- Pumpkin Carving Kit"

NY 807079
March 2, 1995
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc
"Creative Pumpkin Carver," "Carve & Candle Kit" and "Tools for Ghouls-Pumpkin Carving Kit"

NY 817821
January 22, 1996
Four Star International Trading Company
"4-piece pumpkin carving kit"

NY 899065
June 22, 1994
Sunstar Industries, Inc.
"7-piece Halloween Pumpkin Carving Kit"

NY 815629
October 19, 1995
Circle International, Inc. on behalf of Sunhill Industries, Inc.
"Pumpkin carving kit"

James A. Seal for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967377
March 7, 2005
CLA–2 RR: CR: GC 967377 DBS
CATEGORY: Classification
TARIFF NO.: 8211.92.4060

MR. ERIC KENDALL
HMS MFG. CO.
1230 East Big Beaver Road
Troy, MI 48083

RE: Revocation of NY G87300 and Modification of NY G87214; Pumpkin Carving Sets

DEAR MR. KENDALL:

On March 14, 2001, the Director, National Commodity Specialist Division (NCSD), issued to you New York Ruling Letter (NY) G87300, classifying four pumpkin carving kits under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) according to General Rule of Interpretation (GRI) 3(c). On March 15, 2001, NY G87214, classifying five pumpkin carving kits under the HTSUSA according to GRI 3(c), was also issued to you. We have reviewed these rulings and found NY G87300 to be wholly incorrect and NY G87214 to be incorrect in part. This ruling sets forth the correct classifications.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation and modification of the above identified rulings was published on January 5, 2005, in the CUSTOMS BULLETIN, Volume 39, Number 2. Two comments were received in response to the notice. The concerns raised are addressed herein.

FACTS:

The merchandise classified in NY G87300 is described as follows, all four having been determined to be classifiable as goods put up in sets for retail sale, according to GRI 3(b): the "Pumpkin Deluxe" (#890), "Carving Book and Tools" (#892), "Carving Kit" (#893) and "Kid's Carving Book and Tools" (#895) — all contain one or two carving knives, a plastic scraper, a felt tip pen and paper stencils. Kit #895 also includes two glitter glue pens.

The merchandise classified in NY G87214 is described as follows, all five also having been determined to be classifiable as goods put up in sets for retail sale, according to GRI 3(b): "Pumpkin Carving Kit" (#881) consists of a pumpkin carving knife, a plastic scoop, a felt tip pen and paper stencils. The "Pumpkin Carving Party Kit" (#898) consists of 4 carving knives, 2 felt tip pens, 1 plastic scraper, 2 glitter glue pens and paper stencils. "The Pumpkin Carving Party Kit" (#888) is identical to #898, except that #888 will contain four candles in addition to the articles contained in #898. Kit #882 contains only a plastic scraper. Kit #883 contains only a pumpkin carving knife. They are imported from China.

In both rulings, it was determined no component in the set imparted the essential character. Therefore, they were classified according to GRI 3(c) by

the component occurring last in numerical order among the competing headings which equally merit consideration.

ISSUE:

Whether the pumpkin carving kits have an essential character for purposes of classification according to GRI 3(b).

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

NY G87300 and NY G87214 correctly concluded that the kits at issue constituted "goods put up in sets for retail sale" according to GRI 3(b). GRI 3(b) provides, in relevant part, that such sets are classified by the component that imparts the essential character of the set. If the essential character cannot be determined, GRI 3(c) provides that the set will fall to be classified in the heading that occurs last in numerical order among those which equally merit consideration. GRI 3(c) applies only where GRI 3(a) and GRI 3(b) fail. *See* EN to GRI 3. Both rulings stated that no single component in the kits imparted the essential character, and classified the sets by GRI 3(c) under heading 9608, HTSUS, which was the last heading among the various items in each set.. The application of GRI 3(c) was consistent with several rulings on pumpkin carving kits. However, we now believe the essential character can be determined, and resort to GRI 3(c) is not necessary.

EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods." Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. *See, e.g., Better Home Plastics Corp. v. U.S.*, 916 F. Supp. 1265 (CIT 1996), *aff'd* 119 F. 3d 969 (Fed. Cir. 1997) *Mita Copystar America, Inc. v. U.S.*, 966 F. Supp. 1245 (CIT 1997), *rehear'g denied*, 994 F. Supp. 393 (CIT 1998)), *rev'd on other grounds* 160 F. 3d 710 (Fed. Cir. 1998); *see also Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *aff'd* 171 F.3d 1370 (Fed. Cir. 1999).

Better Home Plastics involved the classification of shower curtain sets. In holding that the set was classified in heading 3924, HTSUS, which provided for the plastic liner, the Court of International Trade relied largely on previous decisions in which the essential character was the component that was indispensable to the function of the good. *See United States v. Canadian Vinyl Industries, Inc.*, 64 C.C.P.A. 97, C.A.D. 1189, 555 F.2d 806 (1977); *see also United China & Glass v. United States*, 61 Cust. Ct. 386, 389, 293 F.

Supp. 734, 737, Cust. Dec. 3637 (1968) (noting essential character is that attribute "which is indispensable to the structure, core or condition of the article, i.e., what it is."). It reasoned that the utilitarian role of a shower liner, that is, preventing the escape of water, protecting the curtain from mildew and soap scum, and providing privacy, is more important than the decorative value of the inexpensive and partially transparent textile curtain sold with it.

The primary purpose of a pumpkin carving kit is to carve designs, such as a jack o' lantern face, into a pumpkin. Although it may not predominate in bulk, weight or value, the carving knife fulfills this purpose. A pumpkin cannot be carved into a jack o' lantern by a pen or stencils or glue or a scoop. Moreover, the other components contribute to the use of the carving knife or accent the carved designs. However, without the other articles, the knife can still be used to carry out the kit's purpose of carving a design into a pumpkin. It is the knife that is indispensable to the set. Therefore, the utility of the knife in relation to the use of the set predominates over the remaining goods just as the plastic liner predominated over the curtain in *Better Home Plastics*.

Comments opposing the proposed action to revoke NY G87300, modify NY G87214, and revoke CBP's treatment of pumpkin carving sets argued that, unlike the set in *Better Home Plastics* in which the court determined that liner served the purpose of the whole set, here a consumer must use each of the items in these sets to complete the decorating process. It was further argued that the attraction of the sets is the other products in the set, as carving tools may be purchased individually, and are sold next to the sets in a retail store. Both of the commentors suggest that, in light of the foregoing, stencils (or the like) impart the essential character of the set, or at least are equally important. We have considered these and other arguments raised in the comments and disagree. In these instances, stencils do not decorate the pumpkin, their designs must be carved into the pumpkin, making them less essential to the set than the carving tool.

As the essential character of the instant sets is imparted by the carving knife, the instant pumpkin carving sets are classified according to GRI 3(b) in subheading 8211.92.4060, HTSUSA, which provides for other knives having fixed blades with rubber or plastic handles. Where the appropriate provision in Chapter 82 carries a specific or compound rate of duty in addition to the *ad valorem* rate, as it does here, the specific or compound rate is applied to each of the items in a set. *See* HQ 088521, dated May 13, 1991, and Informed Compliance Publication, *Classification of Sets Under HTSUS*, updated March 2004, p. 19.

In addition to the rulings at issue above, we reviewed other rulings issued to other importers or their representatives on pumpkin carving kits. Many of them held the kits were classified by the carving instrument, whether it was a knife of heading 8211, HTSUSA, or other hand tools of heading 8205, HTSUSA, but employed GRI 3(c) to resolve the classification. As the holding is correct but the analysis is not, the rulings need not be modified pursuant to 19 U.S.C. §1625(c). However, the analysis in the following rulings needs to be corrected: NY I89205, dated November 19, 2002; NY G87082, dated February 26, 2001; NY 818260, dated February 9, 1996; NY 807079, dated March 2, 1995; NY 817821, dated January 22, 1996; NY 899065, dated June 22, 1994 and NY 815629, dated October 19, 1995. The analysis set forth to classify several models of pumpkin carving kits in NY G81860, dated Sep-

tember 27, 2000, also require modification, but as other models in the ruling require new classifications, the analysis will be modified in a separate ruling pursuant to 19 U.S.C. §1625(c).

We note that certain exceptions to the analysis set forth above apply on a case-by-case basis. NY B85472, dated June 5, 1997, classified a pumpkin carving kit consisting of a plastic "Erie Eyeball Maker," plastic scoop and saw with a metal blade and plastic handle, in subheading 8211.92.4060, HTSUSA, by GRI 3(c). In that case, making eyeballs and sawing the pumpkin both accomplish the primary purpose of carving designs into the pumpkin, and are therefore equally essential to that particular set. Application of GRI 3(c) was appropriate.

In the proposed action, we also determined that GRI 3(c) was also properly applied to NY F83018, dated February 22, 2000, which classified Pumpkin Party Deluxe Carve and Stencil Kit in subheading 8524.39.8000, HTSUS. The set included a CD-ROM that generated stencils on a computer. We stated stencil making and pumpkin carving are equally important in relation to the use of that set. One commentor stated that the CD-ROM was not interactive, that it simply contained stencil designs to be printed out. As this was similar to any other stencil, the exception was not clear.

NY F83018 states that the user can "produce pictorial stencils generated from the CD-ROM program application." While the commentor's interpretation of this statement appears as equally plausible as ours, the National Commodity Specialist Division, issuer of the ruling, verified that the CD-ROM was in fact interactive. One could create stencils, but could also use preprogrammed stencils. Thus, the use of this good is not simply to carve decorations, but create that which is to be carved. We have re-evaluated our position in light of this information and herein affirm our initial determination.

The commentor further argued that applying GRI 3(c) provides certainty for importers in classifying these sets, whereas case-by-case determinations create confusion. While it would be simpler and more efficient for both importers and CBP to apply GRI 3(c) in all set cases, it is inconsistent with the laws of tariff classification, specifically GRI 3. The sections of GRI 3 are applied hierarchically. GRI 3(c) is the last resort, to be used only if we are unable to determine the essential character. Upon reconsideration, we were able to determine the essential character of the sets we reviewed. Therefore, we need not resort to GRI 3(c) for most pumpkin carving sets.

Classifying a "set for retail sale" (or composite good) by its essential character is the legal fiction created by GRI 3(b). *See The Pomeroy Collection, Inc. v. United States*, 246 F. Supp. 2d 1286, 1294 (CIT 2002), *a'ffd by Pomeroy*, 336 F.3d 1370 (Fed. Cir. 2003). Whether a group of goods is classifiable as a set, and, if so, by which component, are determinations that depend upon the various factors enumerated above. The determinations are innately "case-by-case." Though a pattern of classification often emerges where goods have similar components, as many of the aforementioned sets do, the GRIs must be applied in all instances.

HOLDING:

At GRI 3(b), pumpkin carving kits are classified in subheading 8211.92.4060, HTSUSA, which provides for "Knifes with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Other knives having fixed blades: With rubber or plastic handles: Other: Other." The 2005 rate of

duty is 1¢ each + 4.6% *ad valorem*. Note that the candles in "Pumpkin Carving Kit #882" may be subject to the determination by the U.S. Department of Commerce that petroleum wax candles in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers and tea light candles are within the scope of the antidumping duty order on petroleum wax candles from China.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY G87300, dated March 14, 2001 is REVOKED and NY G87214, dated March 15, 2001, is hereby MODIFIED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. As this time frame is determined by statute, CBP cannot delay the effective date.

Though the classification remains unchanged, the analysis of the following rulings is hereby modified in accordance with the LAW AND ANALYSIS above as follows with respect to the specifically enumerated products:

Ruling Number
Issue Date
To Whom Addressed
Product identification

NY I89205
November 19, 2002
Paper Magic Group, Inc
Item # 6520210 "Be Neat and Carve" pumpkin carving kit

NY G87082
February 26, 2001
Expeditors International of Washington, Inc. on behalf of Pumpkin LTD, d/b/a Pumpkin Masters
Sparkling Pumpkin Jewels pumpkin carving kit

NY 818260
February 9, 1996
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc.
"Carve & Candle Kit" and "Tools for Ghouls- Pumpkin Carving Kit"

NY 807079
March 2, 1995
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc
"Creative Pumpkin Carver," "Carve & Candle Kit" and "Tools for Ghouls-Pumpkin Carving Kit"

NY 817821
January 22, 1996
Four Star International Trading Company
"4-piece pumpkin carving kit"

NY 899065
June 22, 1994
Sunstar Industries, Inc.
"7-piece Halloween Pumpkin Carving Kit"

NY 815629
October 19, 1995
Circle International, Inc. on behalf of Sunhill Industries, Inc.
"Pumpkin carving kit"

James A. Seal for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967378
March 7, 2005
CLA–2 RR: CR: GC 967378 DBS
CATEGORY: Classification
TARIFF NO.: 8205.51.3060

MR. JOSEPH STINSON
LISS GLOBAL INC.
7746 Dungan Road
Philadelphia, PA 19111

RE: Revocation of NY J81070; Pumpkin Carving Set

DEAR MR. STINSON:

On February 20, 2003, the Director, National Commodity Specialist Division, issued to you New York Ruling Letter (NY) J81070, classifying a pumpkin carving kit under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) according to General Rule of Interpretation (GRI) 3(c). We have reviewed the ruling and found NY J81070 to be incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on January 5, 2005, in the CUSTOMS BULLETIN, Volume 39, Number 2. Two comments were received in response to the notice. The concerns raised are addressed herein.

FACTS:

The merchandise classified in NY J81070 is described as a pumpkin carving kit, item 93186. It includes 5 paper stencils, 2 utility candles, 1 plastic pumpkin scoop, 1 felt tipped marker, 1 carving tool, 1 etching tool, and 1 designer tool. These items are packaged for retail sale in a plastic box. They are imported from China.

It was determined no component in the set imparted the essential character. Therefore, they were classified according to GRI 3(c) by the component occurring last in numerical order among the competing headings which equally merit consideration.

ISSUE:

Whether the pumpkin carving kit has an essential character for purposes of classification according to GRI 3(b).

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

NY J81070 correctly concluded that the kits at issue constituted "goods put up in sets for retail sale" according to GRI 3(b). GRI 3(b) provides, in relevant part, that such sets are classified by the component that imparts the essential character of the set. If the essential character cannot be determined, GRI 3(c) provides that the set will fall to be classified in the heading that occurs last in numerical order among those which equally merit consideration. GRI 3(c) applies only where GRI 3(a) and GRI 3(b) fail. *See* EN to GRI 3. The ruling stated that no single component in the kits imparted the essential character, and classified the sets by GRI 3(c) under heading 9608, HTSUS, which was the last heading among the various items in each set. The application of GRI 3(c) was consistent with several rulings on pumpkin carving kits. However, we now believe the essential character can be determined, and resort to GRI 3(c) is not necessary.

EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods." Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. *See, e.g., Better Home Plastics Corp. v. U.S.*, 916 F. Supp. 1265 (CIT 1996), *aff'd* 119 F. 3d 969 (Fed. Cir. 1997) *Mita Copystar America, Inc. v. U.S.*, 966 F. Supp. 1245 (CIT 1997), *rehear'g denied*, 994 F. Supp. 393 (1998), *rev'd on other grounds* 160 F. 3d 710 (Fed. Cir. 1998); *see also Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), aff'd 171 F.3d 1370 (Fed. Cir. 1999).

Better Home Plastics involved the classification of shower curtain sets. In holding that the set was classified in heading 3924, HTSUS, which provided for the plastic liner, the Court of International Trade relied largely on previous decisions in which the essential character was the component that was indispensable to the function of the good. *See United States v. Canadian Vinyl Industries, Inc.*, 64 C.C.P.A. 97, C.A.D. 1189, 555 F.2d 806 (1977); *see also United China & Glass v. United States*, 61 Cust. Ct. 386, 389, 293 F. Supp. 734, 737, Cust. Dec. 3637 (1968) (noting essential character is that attribute "which is indispensable to the structure, core or condition of the article, i.e., what it is."). It reasoned that the utilitarian role of a shower liner,

that is, preventing the escape of water, protecting the curtain from mildew and soap scum, and providing privacy, is more important than the decorative value of the inexpensive and partially transparent textile curtain sold with it.

The primary purpose of a pumpkin carving kit is to carve designs, such as a jack o' lantern face, into a pumpkin. Although it may not predominate in bulk, weight or value, the carving knife fulfills this purpose. A pumpkin cannot be carved into a jack o' lantern by a pen or stencils or glue or a scoop. Moreover, the other components contribute to the use of the carving knife or accent the carved designs. However, without the other articles, the knife can still be used to carry out the kit's purpose of carving a design into a pumpkin. It is the knife that is indispensable to the set. Therefore, the utility of the knife in relation to the use of the set predominates over the remaining goods just as the plastic liner predominated over the curtain in *Better Home Plastics*.

Comments opposing the proposed action to revoke NY J81070 and CBP's treatment of pumpkin carving sets argued that, unlike the set in *Better Home Plastics* in which the court determined that liner served the purpose of the whole set, here a consumer must use each of the items in these sets to complete the decorating process. It was further argued that the attraction of the sets is the other products in the set, as carving tools may be purchased individually, and are sold next to the sets in a retail store. Both of the commentors suggest that, in light of the foregoing, stencils (or the like) impart the essential character of the set, or at least are equally important. We have considered these and other arguments raised in the comments and disagree. In these instances, stencils do not decorate the pumpkin, their designs must be carved into the pumpkin, making them less essential to the set than the carving tool.

As the essential character of the instant sets is imparted by the carving knife, the instant pumpkin carving sets are classified according to GRI 3(b) in subheading 8205.51.3060, HTSUSA, which provides for other household handtools, not elsewhere specified or included.

In addition to the rulings at issue above, we reviewed other rulings issued to other importers or their representatives on pumpkin carving kits. Many of them held the kits were classified by the carving instrument, whether it was a knife of heading 8211, HTSUSA, or other hand tools of heading 8205, HTSUSA, but employed GRI 3(c) to resolve the classification. As the holding is correct but the analysis is not, the rulings need not be modified pursuant to 19 U.S.C. §1625(c). However, the analysis in the following rulings needs to be corrected: NY I89205, dated November 19, 2002; NY G87082, dated February 26, 2001; NY 818260, dated February 9, 1996; NY 807079, dated March 2, 1995; NY 817821, dated January 22, 1996; NY 899065, dated June 22, 1994 and NY 815629, dated October 19, 1995. The analysis set forth to classify several models of pumpkin carving kits in NY G81860, dated September 27, 2000, also require modification, but as other models in the ruling require new classifications, the analysis will be modified in a separate ruling pursuant to 19 U.S.C. §1625(c).

We note that certain exceptions to the analysis set forth above apply on a case-by-case basis. NY B85472, dated June 5, 1997, classified a pumpkin carving kit consisting of a plastic "Erie Eyeball Maker," plastic scoop and saw with a metal blade and plastic handle, in subheading 8211.92.4060, HTSUSA, by GRI 3(c). In that case, making eyeballs and sawing the pump-

kin both accomplish the primary purpose of carving designs into the pumpkin, and are therefore equally essential to that particular set. Application of GRI 3(c) was appropriate.

In the proposed action, we also determined that GRI 3(c) was also properly applied to NY F83018, dated February 22, 2000, which classified Pumpkin Party Deluxe Carve and Stencil Kit in subheading 8524.39.8000, HTSUS. The set included a CD-ROM that generated stencils on a computer. We stated stencil making and pumpkin carving are equally important in relation to the use of that set. One commentor stated that the CD-ROM was not interactive, that it simply contained stencil designs to be printed out. As this was similar to any other stencil, the exception was not clear.

NY F83018 states that the user can "produce pictorial stencils generated from the CD-ROM program application." While the commentor's interpretation of this statement appears as equally plausible as ours, the National Commodity Specialist Division, issuer of the ruling, verified that the CD-ROM was in fact interactive. One could create stencils, but could also use preprogrammed stencils. Thus, the use of this good is not simply to carve decorations, but create that which is to be carved. We have re-evaluated our position in light of this information and herein affirm our initial determination.

The commentor further argued that applying GRI 3(c) provides certainty for importers in classifying these sets, whereas case-by-case determinations create confusion. While it would be simpler and more efficient for both importers and CBP to apply GRI 3(c) in all set cases, it is inconsistent with the laws of tariff classification, specifically GRI 3. The sections of GRI 3 are applied hierarchically. GRI 3(c) is the last resort, to be used only if we are unable to determine the essential character. Upon reconsideration, we were able to determine the essential character of the sets we reviewed. Therefore, we need not resort to GRI 3(c) for most pumpkin carving sets.

Classifying a "set for retail sale" (or composite good) by its essential character is the legal fiction created by GRI 3(b). *See The Pomeroy Collection, Inc. v. United States*, 246 F. Supp. 2d 1286, 1294 (CIT 2002), *a'ffd by Pomeroy*, 336 F.3d 1370 (Fed. Cir. 2003). Whether a group of goods is classifiable as a set, and, if so, by which component, are determinations that depend upon the various factors enumerated above. The determinations are innately "case-by-case." Though a pattern of classification often emerges where goods have similar components, as many of the aforementioned sets do, the GRIs must be applied in all instances.

HOLDING:

At GRI 3(b), pumpkin carving kit item # 931861 is classified in subheading 8205.51.3060, HTSUSA, which provides for "Handtools (including glass cutters) not elsewhere specified or included . . . : Other handtools . . . : Household tools, and parts thereof: Of iron or steel: Other (including parts): Other." The 2005 rate of duty is 3.7% *ad valorem*. Note that the candles in this kit may be subject to the determination by the U.S. Department of Commerce that petroleum wax candles in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers and tea light candles are within the scope of the antidumping duty order on petroleum wax candles from China.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY J81070, dated February 20, 2003, is hereby REVOKED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. As this time frame is determined by statute, CBP cannot delay the effective date.

Though the classification remains unchanged, the analysis of the following rulings is hereby modified in accordance with the LAW AND ANALYSIS above as follows with respect to the specifically enumerated products:

Ruling Number
Issue Date
To Whom Addressed
Product identification

NY I89205
November 19, 2002
Paper Magic Group, Inc
Item # 6520210 "Be Neat and Carve" pumpkin carving kit

NY G87082
February 26, 2001
Expeditors International of Washington, Inc. on behalf of Pumpkin LTD, d/b/a Pumpkin Masters
Sparkling Pumpkin Jewels pumpkin carving kit

NY 818260
February 9, 1996
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc.
"Carve & Candle Kit" and "Tools for Ghouls- Pumpkin Carving Kit"

NY 807079
March 2, 1995
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc "Creative Pumpkin Carver," "Carve & Candle Kit" and "Tools for Ghouls-Pumpkin Carving Kit"

NY 817821
January 22, 1996
Four Star International Trading Company
"4-piece pumpkin carving kit"

NY 899065
June 22, 1994
Sunstar Industries, Inc.
"7-piece Halloween Pumpkin Carving Kit"

NY 815629
October 19, 1995
Circle International, Inc. on behalf of Sunhill Industries, Inc.
"Pumpkin carving kit"

James A. Seal for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967379
March 7, 2005
CLA–2 RR: CR: GC 967379 DBS
CATEGORY: Classification
TARIFF NO.: 3926.90.9880

MS. CARI GREGO
DOLLAR TREE STORES, INC.
500 Volvo Parkway
Chesapeake, VA 23320

RE: Modification of NY J82021; Pumpkin Carving Set

DEAR MS. GREGO:

On April 10, 2003, the Director, National Commodity Specialist Division, issued to you New York Ruling Letter (NY) J82021, classifying a pumpkin carving kit under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) according to General Rule of Interpretation (GRI) 3(c). We have reviewed the ruling and found the classification of the kit with the battery operated light to be incorrect. This ruling sets forth the correct classification. In addition, please note that the analysis used to classify all three sets in NY J82021 is modified herein.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified ruling was published on January 5, 2005, in the CUSTOMS BULLETIN, Volume 39, Number 2. Two comments were received in response to the notice. The concerns raised are addressed herein.

FACTS:

The merchandise classified in NY J82021 is described as pumpkin carving kits. All three are identified by the same two model numbers: Item No. H1124 and 813659. The first kit consists of a manual drilling tool with a plastic drill tip, a wood hammer and 50 plastic pegs. The second kit consists of a manual drilling tool with a plastic drill tip, 20 plastic pegs, a crayon and a wood scoop. The third set consists of a manual drilling tool with a plastic drill tip, 50 plastic pegs and a battery operated light to be placed inside the pumpkin to illuminate the pegs. The items of the three kits are packaged for retail sale. The kits are classified as sets according to the heading of the article or articles that provide the essential character of the set.

It was determined no component in the sets imparted the essential character. Therefore, they were classified according to GRI 3(c) by the component occurring last in numerical order among the competing headings which equally merit consideration.

ISSUE:

Whether the pumpkin carving kits have an essential character for purposes of classification according to GRI 3(b).

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

NY J82021 correctly concluded that the kits at issue constituted "goods put up in sets for retail sale" according to GRI 3(b). GRI 3(b) provides, in relevant part, that such sets are classified by the component that imparts the essential character of the set. If the essential character cannot be determined, GRI 3(c) provides that the set will fall to be classified in the heading that occurs last in numerical order among those which equally merit consideration. GRI 3(c) applies only where GRI 3(a) and GRI 3(b) fail. *See* EN to GRI 3. The ruling stated that no single component in the kits imparted the essential character, and classified the sets by GRI 3(c) under heading 9608, HTSUS, which was the last heading among the various items in each set. The application of GRI 3(c) was consistent with several rulings on pumpkin carving kits. However, we now believe the essential character can be determined, and resort to GRI 3(c) is not necessary.

EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods." Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. *See, e.g., Better Home Plastics Corp. v. U.S.*, 916 F. Supp. 1265 (CIT 1996), *aff'd* 119 F. 3d 969 (Fed. Cir. 1997) *Mita Copystar America, Inc. v. U.S.*, 966 F. Supp. 1245 (CIT 1997), *rehear'g denied*, 994 F. Supp. 393 (CIT 1998)), *rev'd on other grounds* 160 F. 3d 710 (Fed. Cir. 1998); *see also Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *aff'd* 171 F.3d 1370 (Fed. Cir. 1999).

Better Home Plastics involved the classification of shower curtain sets. In holding that the set was classified in heading 3924, HTSUS, which provided for the plastic liner, the Court of International Trade relied largely on previous decisions in which the essential character was the component that was indispensable to the function of the good. *See United States v. Canadian Vinyl Industries, Inc.*, 64 C.C.P.A. 97, C.A.D. 1189, 555 F.2d 806 (1977); *see also United China & Glass v. United States*, 61 Cust. Ct. 386, 389, 293 F. Supp. 734, 737, Cust. Dec. 3637 (1968) (noting essential character is that attribute "which is indispensable to the structure, core or condition of the article, i.e., what it is."). It reasoned that the utilitarian role of a shower liner, that is, preventing the escape of water, protecting the curtain from mildew and soap scum, and providing privacy, is more important than the decora-

tive value of the inexpensive and partially transparent textile curtain sold with it.

The primary purpose of a pumpkin carving kit is to carve designs, such as a jack o' lantern face, into a pumpkin. Although it may not predominate in bulk, weight or value, the carving tool, or in this case, drilling tool, fulfills this purpose. A pumpkin cannot be carved into a jack o' lantern by a pegs or crayons or a scoop. Moreover, the other components contribute to the use of the carving tool or accent the carved designs. However, without the other articles, the carving/drilling tool can still be used to carry out the kits' purpose of carving a design into a pumpkin. It is the carving tool that is indispensable to the set. Therefore, the utility of the carving/drilling tool in relation to the use of the set predominates over the remaining goods just as the plastic liner predominated over the curtain in *Better Home Plastics*.

Comments opposing the proposed action to modify NY J82021 and revoke CBP's treatment of pumpkin carving sets argued that, unlike the set in *Better Home Plastics* in which the court determined that liner served the purpose of the whole set, here a consumer must use each of the items in these sets to complete the decorating process. It was further argued that the attraction of the sets is the other products in the set, as carving tools may be purchased individually, and are sold next to the sets in a retail store. Both of the commentors suggest that, in light of the foregoing, stencils (or the like) impart the essential character of the set, or at least are equally important. We have considered these and other arguments raised in the comments and disagree. In these instances, stencils do not decorate the pumpkin, their designs must be carved into the pumpkin, making them less essential to the set than the carving tool. In this case, the drilling tool is akin to the carving tool, as discussed above.

As the essential character of the instant sets is imparted by the plastic drillling tool, the instant pumpkin carving sets are classified according to GRI 3(b) in subheading 3926.90.9880, HTSUSA, which provides for other articles of plastic.

In addition to the rulings at issue above, we reviewed other rulings issued to other importers or their representatives on pumpkin carving kits. Many of them held the kits were classified by the carving instrument, whether it was a knife of heading 8211, HTSUSA, or other hand tools of heading 8205, HTSUSA, but employed GRI 3(c) to resolve the classification. As the holding is correct but the analysis is not, the rulings need not be modified pursuant to 19 U.S.C. §1625(c). However, the analysis in the following rulings needs to be corrected: NY I89205, dated November 19, 2002; NY G87082, dated February 26, 2001; NY 818260, dated February 9, 1996; NY 807079, dated March 2, 1995; NY 817821, dated January 22, 1996; NY 899065, dated June 22, 1994 and NY 815629, dated October 19, 1995. The analysis set forth to classify several models of pumpkin carving kits in NY G81860, dated September 27, 2000, also require modification, but as other models in the ruling require new classifications, the analysis will be modified in a separate ruling pursuant to 19 U.S.C. §1625(c).

We note that certain exceptions to the analysis set forth above apply on a case-by-case basis. NY B85472, dated June 5, 1997, classified a pumpkin carving kit consisting of a plastic "Erie Eyeball Maker," plastic scoop and saw with a metal blade and plastic handle, in subheading 8211.92.4060, HTSUSA, by GRI 3(c). In that case, making eyeballs and sawing the pump-

kin both accomplish the primary purpose of carving designs into the pumpkin, and are therefore equally essential to that particular set. Application of GRI 3(c) was appropriate.

In the proposed action, we also determined that GRI 3(c) was also properly applied to NY F83018, dated February 22, 2000, which classified Pumpkin Party Deluxe Carve and Stencil Kit in subheading 8524.39.8000, HTSUS. The set included a CD-ROM that generated stencils on a computer. We stated stencil making and pumpkin carving are equally important in relation to the use of that set. One commentor stated that the CD-ROM was not interactive, that it simply contained stencil designs to be printed out. As this was similar to any other stencil, the exception was not clear.

NY F83018 states that the user can "produce pictorial stencils generated from the CD-ROM program application." While the commentor's interpretation of this statement appears as equally plausible as ours, the National Commodity Specialist Division, issuer of the ruling, verified that the CD-ROM was in fact interactive. One could create stencils, but could also use preprogrammed stencils. Thus, the use of this good is not simply to carve decorations, but create that which is to be carved. We have re-evaluated our position in light of this information and herein affirm our initial determination.

The commentor further argued that applying GRI 3(c) provides certainty for importers in classifying these sets, whereas case-by-case determinations create confusion. While it would be simpler and more efficient for both importers and CBP to apply GRI 3(c) in all set cases, it is inconsistent with the laws of tariff classification, specifically GRI 3. The sections of GRI 3 are applied hierarchically. GRI 3(c) is the last resort, to be used only if we are unable to determine the essential character. Upon reconsideration, we were able to determine the essential character of the sets we reviewed. Therefore, we need not resort to GRI 3(c) for most pumpkin carving sets.

Classifying a "set for retail sale" (or composite good) by its essential character is the legal fiction created by GRI 3(b). *See The Pomeroy Collection, Inc. v. United States*, 246 F. Supp. 2d 1286, 1294 (CIT 2002), *a'ffd by Pomeroy*, 336 F.3d 1370 (Fed. Cir. 2003). Whether a group of goods is classifiable as a set, and, if so, by which component, are determinations that depend upon the various factors enumerated above. The determinations are innately "case-by-case." Though a pattern of classification often emerges where goods have similar components, as many of the aforementioned sets do, the GRIs must be applied in all instances.

HOLDING:

At GRI 3(b), the instant pumpkin carving kits are classified in subheading 3926.90.9880, HTSUSA, which provides for, "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other." The 2005 rate of duty is 5.3% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY J82021, dated April 10, 2003, is hereby MODIFIED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. As this time frame is determined by statute, CBP cannot delay the effective date.

Though the classification remains unchanged, the analysis of the following rulings is hereby modified in accordance with the LAW AND ANALYSIS above as follows with respect to the specifically enumerated products:

Ruling Number
Issue Date
To Whom Addressed
Product identification

NY I89205
November 19, 2002
Paper Magic Group, Inc
Item # 6520210 "Be Neat and Carve" pumpkin carving kit

NY G87082
February 26, 2001
Expeditors International of Washington, Inc. on behalf of Pumpkin LTD, d/b/a Pumpkin Masters
Sparkling Pumpkin Jewels pumpkin carving kit

NY 818260
February 9, 1996
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc.
"Carve & Candle Kit" and "Tools for Ghouls- Pumpkin Carving Kit"

NY 807079
March 2, 1995
Silvey Shipping Co., Inc. on behalf of The Paper Magic Group, Inc
"Creative Pumpkin Carver," "Carve & Candle Kit" and "Tools for Ghouls-Pumpkin Carving Kit"

NY 817821
January 22, 1996
Four Star International Trading Company
"4-piece pumpkin carving kit"

NY 899065
June 22, 1994
Sunstar Industries, Inc.
"7-piece Halloween Pumpkin Carving Kit"

NY 815629
October 19, 1995
Circle International, Inc. on behalf of Sunhill Industries, Inc.
"Pumpkin carving kit"

James A. Seal for MYLES B. HARMON,
Director,
Commercial Rulings Division.