

# U.S. Customs and Border Protection

## *CBP Decisions*

**DEPARTMENT OF THE TREASURY**

**19 CFR PARTS 10, 24, 102, 162, 163, and 178**

**USCBP-2007-0063**

**CBP Dec. 07-81**

**RIN 1505-AB81**

### **UNITED STATES-BAHRAIN FREE TRADE AGREEMENT**

**AGENCIES:** Bureau of Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Interim regulations; solicitation of comments.

**SUMMARY:** This document amends the U.S. 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-Bahrain Free Trade Agreement entered into by the United States and the Kingdom of Bahrain.

**DATES:** Interim rule effective October 16, 2007; comments must be received by December 17, 2007.

**ADDRESSES:** You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2007-0063.

- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. 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 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including

any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. 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.

**FOR FURTHER INFORMATION CONTACT:**

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

Other Operational Aspects: Seth Mazze, Office of International Trade, (202) 344–2634. Audit Aspects: Mark Hanson, Office of International Trade, (202) 863–3065. Legal Aspects: Holly Files, Office of International Trade, (202) 572–8817.

**SUPPLEMENTARY INFORMATION:**

**Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See ADDRESSES above for information on how to submit comments.

**Background**

On September 14, 2004, the United States and the Kingdom of Bahrain (the “Parties”) signed the U.S.-Bahrain Free Trade Agreement (“BFTA” or “Agreement”). The stated objectives of the BFTA include creating new employment opportunities and raising the standard of living for the citizens of the Parties by liberalizing and expanding trade between them; enhancing the competitiveness of the enterprises of the Parties in global markets; establishing clear and mutually advantageous rules governing trade between the Parties; eliminating bribery and corruption in international trade and investment; fostering creativity and innovation by improving technology and enhancing the protection and enforcement of intellectual

property rights; strengthening the development and enforcement of labor and environmental laws and policies; and establishing an expanded free trade area in the Middle East, thereby contributing to economic liberalization and development in the region.

The provisions of the BFTA were adopted by the United States with the enactment of the United States-Bahrain Free Trade Agreement Implementation Act (the “Act”), Pub. L. 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note), on January 11, 2006. Section 205 of the Act requires that regulations be prescribed as necessary.

On July 27, 2006, the President signed Proclamation 8039 to implement the provisions of the BFTA. The proclamation, which was published in the **Federal Register** on August 1, 2006 (71 FR 43635), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of Publication 3830 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 30, incorporating the relevant BFTA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the BFTA where the special program indicator “BH” appears in parenthesis in the “Special” rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XIV to Chapter 99 to provide for temporary tariff rate quotas and applicable safeguards implemented by the BFTA.

U.S. Customs and Border Protection (“CBP”) is responsible for administering the provisions of the BFTA and the Act that relate to the importation of goods into the United States from Bahrain. Those customs-related BFTA provisions that require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Initial Provisions and Definitions), Chapter Two (National Treatment and Market Access for Goods), Chapter Three (Textiles and Apparel), Chapter Four (Rules of Origin), and Chapter Five (Customs Administration).

These implementing regulations incorporate certain general definitions set forth in Article 1.3 of the BFTA. These regulations also implement Article 2.6 (Goods Re-entered after Repair or Alteration) of Chapter Two of the BFTA.

Chapter Three of the BFTA sets forth the measures relating to trade in textile and apparel goods between Bahrain and the United States under the BFTA. The provisions within Chapter Three that require regulatory action by CBP are Article 3.2 (Rules of Origin and Related Matters), Article 3.3 (Customs Cooperation), and Article 3.4 (Definitions).

Chapter Four of the BFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Bahrain (BFTA Party) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as

specified in the Agreement. Under Article 4.1, originating goods may be grouped in three broad categories: (1) goods that are wholly the growth, product, or manufacture of one or both of the Parties; (2) goods (other than those covered by the product-specific rules set forth in Annex 3–A or Annex 4–A) that are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties, and that have a minimum value-content, *i.e.*, at least 35 percent of the good’s appraised value must be attributed to the cost or value of materials produced in one or both of the Parties plus the direct costs of processing operations performed in one or both of the Parties; and (3) goods that satisfy the product-specific rules set forth in Annex 3–A (textile or apparel goods) or Annex 4–A (certain non-textile or non-apparel goods).

Article 4.2 explains that the term “new or different article of commerce” means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. Article 4.3 provides that a good will not be considered to be a new or different article of commerce as the result of undergoing simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

Article 4.4 provides for the accumulation of production in the territory of one or both of the Parties in determining whether a good qualifies as originating under the BFTA. Articles 4.5 and 4.6 set forth the rules for calculating the value of materials and the direct costs of processing operations, respectively, for purposes of determining whether a good satisfies the 35 percent value-content requirement.

Articles 4.7 through 4.9 consist of additional sub-rules applicable to originating goods, involving retail packaging materials, packing materials for shipment, indirect materials, and transit and transshipment. In addition, Articles 4.10 and 4.11 set forth the procedural requirements that apply under the BFTA, in particular with regard to importer claims for preferential tariff treatment. Article 4.14 provides definitions of certain terms used in Chapter Four of the BFTA. The basic rules of origin in Chapter Four of the BFTA are set forth in General Note 30, HTSUS.

Chapter Five sets forth the customs operational provisions related to the implementation and administration of the BFTA.

In order to provide transparency and facilitate their use, the majority of the BFTA implementing regulations set forth in this document have been included within new Subpart N in Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which BFTA implementation is more appropriate in the context of an existing regulatory provision, the BFTA regulatory text has been incorpo-

rated in an existing Part within the CBP regulations. In addition, this document sets forth several cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new BFTA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

### **Discussion of Amendments**

#### **Part 10**

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in Bahrain for which, like goods originating in Canada, Mexico, Singapore, Chile, and Morocco, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of BFTA Article 2.5 (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 N**

##### **General Provisions**

Section 10.801 outlines the scope of new Subpart N, Part 10. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart N, 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 N, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.802 sets forth definitions of common terms used in multiple contexts or places within Subpart N, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 1.3 of the BFTA and § 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 N, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

##### **Import Requirements**

Section 10.803 sets forth the procedure for claiming BFTA tariff benefits at the time of entry.

Section 10.804, as provided in BFTA Article 4.10(b), requires a U.S. importer, upon request, to submit a declaration setting forth all pertinent information concerning the growth, production, or manu-

facture of the good. Included in § 10.804 is a provision that the declaration may be used either for a single importation or for multiple importations of identical goods.

Section 10.805 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment under the BFTA. As provided in BFTA Article 4.10(a), this section states that a U.S. importer who makes a claim for preferential tariff treatment for a good is deemed to have certified that the good qualifies for such treatment.

Section 10.806 provides that the importer's declaration is not required for certain non-commercial or low-value importations.

Section 10.807 implements the portion of BFTA Article 4.10 concerning the maintenance of records necessary for the preparation of the declaration.

Section 10.808, which is based on BFTA Article 4.11.1, provides for the denial of BFTA tariff benefits if the importer fails to comply with any of the requirements of Subpart N, Part 10, CBP regulations.

### **Rules of Origin**

Sections 10.809 through 10.817 provide the implementing regulations regarding the rules of origin provisions of General Note 30, HTSUS, Article 3.2 and Chapter Four of the BFTA, and § 202 of the Act .

#### **Definitions**

Section 10.809 sets forth terms that are defined for purposes of the rules of origin. CBP notes that, pursuant to letters of understanding exchanged between the Parties on September 14, 2004, in determining whether a good meets the definition of a "new or different article of commerce" in paragraph (i) of § 10.809, the United States should be guided by the provisions of Part 102 of the CBP regulations (19 CFR Part 102).

#### **General Rules of Origin**

Section 10.810 includes the basic rules of origin established in Article 4.1 of the BFTA, section 202(b) of the Act, and General Note 30(b), HTSUS.

Paragraph (a) of § 10.810 sets forth the three basic categories of goods that are considered originating goods under the BFTA. Paragraph (a)(1) of § 10.810 specifies those goods that are considered originating goods because they are wholly the growth, product, or manufacture of one or both of the Parties. Paragraph (a)(2) provides that goods are considered originating goods if they: (1) are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties as determined by application of the provisions of § 102.1 through § 102.21

of the CBP regulations (19 CFR §§ 102.1 – 102.21); (2) are classified in HTSUS provisions that are not covered by the product-specific rules set forth in General Note 30(h), HTSUS; and (3) meet a 35 percent domestic-content requirement. Finally, paragraph (a)(3) states that goods are considered originating goods if: (1) they are classified in HTSUS provisions that are covered by the product-specific rules set forth in General Note 30(h), HTSUS; (2) each non-originating material used in the production of the good in the territory of one or both of the Parties undergoes an applicable change in tariff classification or otherwise satisfies the requirements specified in General Note 30(h), HTSUS; and (3) the goods meet any other requirements specified in General Note 30, HTSUS.

Paragraph (b) of § 10.810 sets forth the basic rules that apply for purposes of determining whether a good satisfies the 35 percent domestic-content requirement referred to in § 10.810(a)(2).

Paragraph (c) of § 10.810 implements Article 4.3 of the BFTA, relating to the simple combining or packaging or mere dilution exceptions to the “new or different article of commerce” requirement of § 10.810(a)(2). Since the language in Article 4.3 of the BFTA (and § 202(i)(7)(B) of the Act) is nearly identical to the language found in § 213(a)(2) of the Caribbean Basin Economic Recovery Act (“CBERA”) (19 U.S.C. 2703(a)(2)), § 10.810(c) incorporates by reference the examples and principles set forth in § 10.195(a)(2) of CBP’s implementing CBERA regulations.

#### Originating Textile or Apparel Goods

Section 10.811(a), as provided for in Article 3.2.6 of the BFTA, sets forth a de minimis rule for certain textile or apparel goods that may be considered to qualify as originating goods even though they fail to satisfy the applicable change in tariff classification set out in General Note 30(h). This paragraph also includes an exception to the de minimis rule.

Section 10.811(b), which is based on Article 3.2.7 of the BFTA, sets forth a special rule for textile or apparel goods classifiable under General Rule of Interpretation 3, HTSUS, as goods put up in sets for retail sale.

#### Accumulation

Section 10.812, which is derived from BFTA Article 4.4, sets forth the rule by which originating goods or materials from the territory of a Party that are used in the production of a good in the territory of the other Party will be considered to originate in the territory of such other Party. In addition, this section also establishes that a good or material that is produced by one or more producers in the territory of one or both of the Parties is an originating good or material if the article satisfies all of the applicable requirements of the rules of origin of the BFTA.

#### Value of Materials

Section 10.813 implements Article 4.5 of the BFTA, relating to the calculation of the value of materials that may be applied toward satisfaction of the 35 percent value-content requirement.

#### Direct Costs of Processing Operations

Section 10.814, which reflects Article 4.6 of the BFTA, sets forth provisions regarding the calculation of direct costs of processing operations for purposes of the 35 percent value-content requirement.

#### Packaging and Packing Materials and Containers for Retail Sale and for Shipment

Section 10.815 is based on Article 4.7 of the BFTA and provides that retail packaging materials and packing materials for shipment are to be disregarded in determining whether a good qualifies as originating under the BFTA, except to the extent that the value of such packaging and packing materials may be included for purposes of meeting the 35 percent value-content requirement.

#### Indirect Materials

Section 10.816, which is derived from Article 4.8 of the BFTA, provides that indirect materials will be disregarded in determining whether a good qualifies as an originating good under the BFTA, except to the extent that the cost of such indirect materials may be included toward satisfying the 35 percent value-content requirement.

#### Imported Directly

Section 10.817(a) sets forth the basic rule, found in Article 4.1 of the BFTA, that a good must be imported directly from the territory of a Party into the territory of the other Party to qualify as an originating good under the BFTA. This paragraph further provides that, as set forth in Article 4.9 of the BFTA, a good will not be considered to be imported directly if, after exportation from the territory of a Party, the good undergoes production, manufacturing, or any other operation outside the territories of the Parties, other than certain minor operations.

Paragraph (b) of § 10.817 provides that an importer making a claim for preferential tariff treatment under the BFTA may be required to demonstrate, through the submission of documentary evidence, that the “imported directly” requirement was satisfied.

#### **Tariff Preference Level**

Section 10.818 sets forth the procedures for claiming BFTA tariff benefits for non-originating fabric, apparel, or made-up goods entitled to preference under an applicable tariff preference level (“TPL”).

Section 10.819, which is based on Articles 3.2.8(a) through 3.2.8(d), describes the non-originating fabric, apparel, and made-up goods that are eligible for TPL claims under the BFTA.

Section 10.820 is based on Article 3.2.10 of the BFTA and establishes that, at the written request of the Government of Bahrain, CBP will require an importer claiming preferential treatment on a non-originating cotton or man-made fiber good specified in § 10.819 to submit a certificate of eligibility.

Section 10.821 reflects Article 3.2.11 of the BFTA. Paragraph (a) of § 10.821 provides that an importer claiming preferential treatment on a non-originating cotton or man-made fiber good specified in § 10.819 must submit, at the request of the port director, a declaration setting forth all pertinent production information. Paragraph (b) of § 10.821 requires that an importer must retain all records relied upon to prepare the declaration for a period of five years.

Section 10.822 establishes that non-originating fabric or apparel goods are entitled to preferential tariff treatment under an applicable TPL only if they are imported directly from the territory of a Party into the territory of the other Party.

Section 10.823 provides for the denial of a TPL claim if the importer fails to comply with any applicable requirement under Subpart N, Part 10, CBP regulations, including the failure to provide documentation, when requested by CBP, establishing that the good was imported directly from the territory of a Party into the territory of the other Party.

### **Origin Verifications and Determinations**

Sections 10.824 implements BFTA Article 4.11.2 by providing that a claim for BFTA preferential tariff treatment, including any information submitted in support of the claim, will be subject to such verification as CBP deems necessary. This section further sets forth the circumstances under which a claim may be denied based on the results of the verification.

Section 10.825 implements BFTA Article 4.11.3 by providing that CBP will issue a determination to the importer when CBP determines that a claim for BFTA preferential tariff treatment should be denied based on the results of a verification. This section also prescribes the information required to be included in the determination.

### **Penalties**

Section 10.826 concerns the general application of penalties to BFTA transactions and is based on BFTA Article 5.9.

### **Goods Returned After Repair or Alteration**

Section 10.827 implements BFTA Article 2.6 regarding duty treatment of goods re-entered after repair or alteration in Bahrain.

**Part 24**

A paragraph is added to § 24.23(c), which concerns the merchandise processing fee (MPF) to implement § 203 of the Act, providing that the MPF is not applicable to goods that qualify as originating goods as provided for under § 202 of the Act.

**Part 102**

Part 102 contains regulations regarding the rules for determining the country of origin of imported goods for various purposes. Section 102.0, which sets forth the scope of Part 102, is amended to notify readers that the rules of §§ 102.1 through 102.21 will be used for purposes of determining whether a good is considered a new and different article of commerce under the BFTA.

**Part 162**

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional BFTA records maintenance and examination provisions contained in new Subpart N, Part 10, CBP regulations.

**Part 163**

A conforming amendment is made to § 163.1 to include the maintenance of any documentation that the importer may have in support of a claim for preference under the BFTA as an activity for which records must be maintained. Also, the list or records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) list) is also amended to add the BFTA records that the importer may have in support of a BFTA claim for preferential tariff treatment.

**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 BFTA and the Act.

**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 prior notice and comment procedures do not apply to an agency rulemaking that involves the foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States, as they implement preferential tariff treatment and related provisions of the BFTA. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective upon publication. However, CBP is soliciting comments in this interim rule and will consider all comments it receives before issuing a final rule.

#### **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 1651-0130.

The collections of information in these regulations are in §§ 10.803, 10.804, 10.818, and 10.821. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the BFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the BFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 100 hours.

Estimated average annual burden per respondent: 12 minutes.

Estimated number of respondents: 500.

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 Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W. (Mint Annex), Washington, D.C. 20229.

### **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 his/her delegate) to approve regulations related to certain customs 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.

#### 19 CFR Part 24

Financial and accounting procedures.

#### 19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

#### 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.

### **Amendments to the CBP 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 continues to read, and the specific authority for new Subpart N 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 10.801 through 10.829 also issued under 19 U.S.C. 1202 (General Note 30, HTSUS) and Pub. L. 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note).

2. 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 carrying 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, Chile, Singapore, Morocco, or Bahrain and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 12, 25, 26, 27 and 30, HTSUS, in the country of which the importer is a resident.

\* \* \* \* \*

3. Part 10, CBP regulations, is amended by adding Subpart N to read as follows:

#### **Subpart N - United States-Bahrain Free Trade Agreement**

Sec.

##### **General Provisions**

10.801 Scope.

10.802 General definitions.

**Import Requirements**

- 10.803 Filing of claim for preferential tariff treatment upon importation.
- 10.804 Declaration.
- 10.805 Importer obligations.
- 10.806 Declaration not required.
- 10.807 Maintenance of records.
- 10.808 Effect of noncompliance; failure to provide documentation regarding transshipment.

**Rules of Origin**

- 10.809 Definitions.
- 10.810 Originating goods.
- 10.811 Textile or apparel goods.
- 10.812 Accumulation.
- 10.813 Value of materials.
- 10.814 Direct costs of processing operations.
- 10.815 Packaging and packing materials and containers for retail sale and for shipment.
- 10.816 Indirect materials.
- 10.817 Imported directly.

**Tariff Preference Level**

- 10.818 Filing of claim for tariff preference level.
- 10.819 Goods eligible for tariff preference claims.
- 10.820 Certificate of eligibility.
- 10.821 Declaration.
- 10.822 Transshipment of non-originating fabric or apparel goods.
- 10.823 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating fabric or apparel goods.

**Origin Verifications and Determinations**

- 10.824 Verification and justification of claim for preferential treatment.
- 10.825 Issuance of negative origin determinations.

**Penalties**

- 10.826 Violations relating to the BFTA.

**Goods Returned After Repair or Alteration**

- 10.827 Goods re-entered after repair or alteration in Bahrain.

## SUBPART N - UNITED STATES-BAHRAIN FREE TRADE AGREEMENT

### General Provisions

#### § 10.801 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Bahrain Free Trade Agreement (the BFTA) signed on September 14, 2004, and under the United States-Bahrain Free Trade Agreement Implementation Act (the Act; 119 Stat. 3581). 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 BFTA and the Act are contained in Parts 24, 102, 162, and 163 of this chapter.

#### § 10.802 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) Claim of origin. “Claim of origin” means a claim that a good is an originating good or a good of a Party;

(b) 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 BFTA to an originating good or other good specified in the BFTA, and to an exemption from the merchandise processing fee;

(c) 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;

(d) 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 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 competitive, 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;

(e) Days. “Days” means calendar days;

(f) 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;

(g) Foreign material. “Foreign material” means a material other than a material produced in the territory of one or both of the Parties;

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

(i) Good. “Good” means any merchandise, product, article, or material;

(j) 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;

(k) Heading. “Heading” means the first four digits in the tariff classification number under the Harmonized System;

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

(m) Originating. “Originating” means a good qualifying under the rules of origin set forth in General Note 30, HTSUS, and BFTA Chapter Three (Textiles and apparel) or Chapter Four (Rules of Origin);

(n) Party. “Party” means the United States or the Kingdom of Bahrain;

(o) Person. “Person” means a natural person or an enterprise;

(p) Preferential tariff treatment. “Preferential tariff treatment” means the duty rate applicable under the BFTA to an originating good and an exemption from the merchandise processing fee;

(q) Subheading. “Subheading” means the first six digits in the tariff classification number under the Harmonized System;

(r) 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 “the ATC”), which is part of the WTO Agreement;

(s) Territory. “Territory” means:

(1) With respect to Bahrain, the territory of Bahrain as well as the maritime areas, seabed, and subsoil over which Bahrain exercises, in accordance with international law, sovereignty, sovereign rights, and jurisdiction; 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; and

(t) WTO Agreement. “WTO Agreement” means the Marrakesh Agreement Establishing the World Trade Organization of April 15, 1994.

### **Import Requirements**

#### **§ 10.803 Filing of claim for preferential tariff treatment upon importation.**

An importer may make a claim for BFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol “BH” as a prefix to the sub-heading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

#### **§ 10.804 Declaration.**

(a) **Contents.** An importer who claims preferential tariff treatment for a good under the BFTA must submit to CBP, at the request of the port director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration 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 (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

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

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

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in territory of one or both of

the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 30(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable change in tariff classification specified in General Note 30(h), HTSUS;

(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 these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Bahrain Free Trade Agreement; and

This document consists of \_\_\_ pages, including all attachments."

(b) Responsible official or agent. The declaration 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 declaration must be completed in the English language.

(d) *Applicability of declaration*. The declaration 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 declaration. 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.

**§ 10.805 Importer obligations.**

(a) General. An importer who makes a claim for preferential tariff treatment under § 10.803 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the BFTA:

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.804 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) Information provided by exporter or producer. The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

**§ 10.806 Declaration not required.**

(a) General. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.804 of this subpart for:

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

(2) A commercial importation for which the value of the originating goods does not exceed U.S. \$2,500.

(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 BFTA, the port director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

**§ 10.807 Maintenance of records.**

(a) General. An importer claiming preferential tariff treatment for a good under § 10.803 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) Applicability of other recordkeeping requirements. The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under Part 163 of this chapter.

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

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

(a) General. If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.804 of this subpart, when requested, 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 treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the good was imported directly from the territory of a Party into the territory of the other Party (see § 10.817 of this subpart).

**Rules of Origin**

**§ 10.809 Definitions.**

For purposes of §§ 10.809 through 10.817:

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

(b) Generally Accepted Accounting Principles. “Generally Accepted Accounting Principles” means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) Good. “Good” means any merchandise, product, article, or material;

(d) Goods wholly the growth, product, or manufacture of one or both of the Parties. “Goods wholly the growth, product, or manufacture 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 HTSUS, 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 live animals raised in the territory of one or both of the Parties;

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

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

(7) Goods produced from goods referred to in paragraph (d)(5) of this section on board factory ships registered or recorded with that Party and flying its flag;

(8) 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;

(9) 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;

(10) Waste and scrap derived from:

(i) Production or manufacture 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;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

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

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

(f) Indirect material. “Indirect material” means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, 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 the growth, production, or manufacture of a good 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 good;

(7) Catalysts and solvents; and

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

(g) Material. “Material” means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) Material produced in the territory of one or both of the Parties. “Material produced in the territory of one or both of the Parties” means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) New or different article of commerce. A “new or different article of commerce” exists when the country of origin of a good which is produced in a Party from foreign materials is determined to be that country under the provisions of §§ 102.1 through 102.21 of this Chapter;

(j) Non-originating material. “Non-originating material” means a material that does not qualify as originating under this subpart or General Note 30, HTSUS;

(k) 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;

(l) Recovered goods. “Recovered goods” means materials in the form of individual parts that result from:

(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;

(m) Remanufactured good. “Remanufactured good” means an industrial good that is assembled in the territory of a Party and that:

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

(2) Has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) Simple combining or packaging operations. “Simple combining or packaging operations” means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, or packing or repacking components together.

#### **10.810 Originating goods.**

(a) General. A good will be considered an originating good under the BFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in § 10.809(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 30(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 30(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 30(h), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 30(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 30, HTSUS.

(b) Value-content requirement. A good described in paragraph (a)(2) of this section will be considered an originating good under the BFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) Combining, packaging, and diluting operations. For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in § 10.195(a)(2) of this part will apply equally for purposes of this paragraph.

**§ 10.811 Textile or apparel goods.**

(a) De minimis. (1) General. Except as provided in paragraph (a)(2) of this section, a textile or apparel good that is not an originating good under the BFTA 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 30(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers is not more than seven percent of the total weight of that component.

(2) Exception. A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(b) Textile or apparel goods put up in sets. Notwithstanding the specific rules specified in General Note 30(h), HTSUS, textile or 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 considered to be originating goods under the BFTA unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the appraised value of the set.

**§ 10.812 Accumulation.**

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.810 of this subpart and all other applicable requirements of General Note 30, HTSUS.

**§ 10.813 Value of materials.**

(a) General. For purposes of § 10.810(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

(1) The price actually paid or payable for the material by the producer of the good;

(2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;

(3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and

(4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) Exception. If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties includes the following:

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

(2) A reasonable amount for profit; and

(3) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

#### **§ 10.814 Direct costs of processing operations.**

(a) Items included. For purposes of § 10.810(b) of this subpart, the words "direct costs of processing operations", with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

(1) All actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel;

(2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;

(4) Costs of inspecting and testing the specific good; and

(5) Costs of packaging the specific good for export to the territory of the other Party.

(b) Items not included. For purposes of § 10.810(b) of this subpart, the words "direct costs of processing operations" do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

**§ 10.815 Packaging and packing materials and containers for retail sale and for shipment.**

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under § 10.810 of this subpart and General Note 30, HTSUS, except to the extent that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in § 10.810(b) of this subpart.

**§ 10.816 Indirect materials.**

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under § 10.810 of this subpart and General Note 30, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in § 10.810(b) of this subpart.

**§ 10.817 Imported directly.**

(a) General. To qualify as an originating good under the BFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words “imported directly” mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be “imported directly” only if the good:

(i) Remained under the control of the customs authority of the non-Party; and

(ii) Did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) Documentary evidence. An importer making a claim for preferential tariff treatment under the BFTA for an originating good may be required to demonstrate, to CBP’s satisfaction, that the good was “imported directly” from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this sec-

tion. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

### **Tariff Preference Level**

#### **§ 10.818 Filing of claim for tariff preference level.**

A fabric, apparel, or made-up good described in § 10.819 of this subpart that does not qualify as an originating good under § 10.810 of this subpart may nevertheless be entitled to preferential tariff treatment under the BFTA 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 (9914.99.20) immediately above the applicable subheading in Chapter 52 through Chapter 63 of the HTSUS under which each non-originating fabric or apparel good is classified.

#### **§ 10.819 Goods eligible for tariff preference claims.**

The following goods are eligible for a TPL claim filed under § 10.818 of this subpart (subject to the quantitative limitations set forth in U.S. Note 13, Subchapter XIV, Chapter 99, HTSUS):

(a) Cotton or man-made fiber fabric goods provided for in Chapters 52, 54, 55, 58, and 60 of the HTSUS that are wholly formed in the territory of Bahrain from yarn produced or obtained outside the territory of Bahrain or the United States;

(b) Cotton or man-made fiber fabric goods provided for in subheadings 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, 5802.30, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30, 5805.00.30, 5805.00.40, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05, 5807.10.20, 5807.90.05, 5807.90.20, 5808.10.40, 5808.10.70, 5808.90, 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, and 6006.44 of the HTSUS that are wholly formed in the territory of Bahrain from yarn spun in the territory of Bahrain or the United States from fiber produced or obtained outside the territory of Bahrain or the United States;

(c) Cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the HTSUS that are cut or knit to shape, or both, and

sewn or otherwise assembled in the territory of Bahrain from fabric or yarn produced or obtained outside the territory of Bahrain or the United States; and

(d) Cotton or man-made fiber made-up goods provided for in Chapter 63 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain from fabric wholly formed in Bahrain or the United States from yarn produced or obtained outside the territory of Bahrain or the United States.

#### **§ 10.820 Certificate of eligibility.**

Upon request, an importer claiming preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.819 of this subpart must submit to CBP a certificate of eligibility. The certificate of eligibility must be completed and signed by an authorized official of the Government of Bahrain and must be in the possession of the importer at the time the preferential tariff treatment is claimed.

#### **§ 10.821 Declaration.**

(a) General. An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.819 of this subpart must submit, at the request of the port director, a declaration supporting such a claim for preferential tariff treatment that sets forth all pertinent information concerning the production of the good, including:

- (1) A description of the good, quantity, invoice numbers, and bills of lading;
- (2) A description of the operations performed in the production of the good in the territory of one or both of the Parties;
- (3) A reference to the specific provision in § 10.819 of this subpart that forms the basis for the claim for preferential tariff treatment; and
- (4) A statement as to any fiber, yarn, or fabric of a non-Party and the origin of such materials used in the production of the good.

(b) Retention of records. An importer must retain all documents relied upon to prepare the declaration for a period of five years.

#### **§ 10.822 Transshipment of non-originating fabric or apparel goods.**

(a) General. To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words “imported directly” mean:

- (1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be “imported directly” only if the good:

(i) Remained under the control of the customs authority of the non-Party; and

(ii) Did not undergo production, manufacturing, 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 territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or other aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) Documentary evidence. An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP’s satisfaction, that the good was “imported directly” from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

**§ 10.823 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating fabric or apparel goods.**

(a) General. If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, 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 a Party, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the requirements set forth in § 10.822 of this subpart were met.

### **Origin Verifications and Determinations**

#### **§ 10.824 Verification and justification of claim for preferential treatment.**

(a) Verification. A claim for preferential treatment made under § 10.803 of this subpart, including any declaration 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 is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment.

(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.

#### **§ 10.825 Issuance of negative origin determinations.**

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.803 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer 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; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 30, HTSUS, and in §§ 10.809 through 10.817 of this subpart, the legal basis for the determination.

### **Penalties**

#### **§ 10.826 Violations relating to the BFTA.**

All criminal, civil, or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the BFTA.

### **Goods Returned After Repair or Alteration**

#### **§ 10.827 Goods re-entered after repair or alteration in Bahrain.**

(a) General. This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Bahrain as provided for in subheadings

9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Bahrain, 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, re-sterilizing, 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 Bahrain, are incomplete for their intended use and for which the processing operation performed in Bahrain constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) Documentation. The provisions of paragraphs (a), (b), and (c) of § 10.8 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 Bahrain after having been exported for repairs or alterations and which are claimed to be duty free.

**PART 24 - CUSTOMS FINANCIAL AND ACCOUNTING  
PROCEDURE**

4. The general authority citation for Part 24 and the specific authority for § 24.23 continue 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;

\* \* \* \* \*

5. Section 24.23 is amended by adding a new paragraph (c)(8) to read as follows:

**§ 24.23 Fees for processing merchandise.**

\* \* \* \* \*

(c) \* \* \*

(8) 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 – Bahrain Free Trade Agreement Implementation Act (see

also General Note 30, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after August 1, 2006.

\* \* \* \* \*

#### PART 102 - RULES OF ORIGIN

6. The authority citation for Part 102 is revised to read as follows:  
**Authority:** 19 U.S.C. 66, 1202, (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

7. Section 102.0 is amended by adding, after the second sentence, a new sentence to read as follows:

##### § 102.0 Scope.

\* \* \* The rules set forth in §§ 102.1 through 102.21 of this Part will also apply for purposes of determining whether an imported good is a new or different article of commerce under § 10.809 of the United States-Bahrain Free Trade Agreement regulations. \* \* \*

#### PART 162 - INSPECTION, SEARCH, AND SEIZURE

8. 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.

\* \* \* \* \*

9. Section 162.0 is amended by revising the last sentence 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, the U.S.-Singapore Free Trade Agreement, the U.S.-Morocco Free Trade Agreement, and the U.S.-Bahrain Free Trade Agreement are contained in Part 10, Subparts H, I, M, and N of this chapter, respectively.

#### PART 163 - RECORDKEEPING

10. 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.

11. Section 163.1(a)(2) is amended by re-designating paragraph (a)(2)(x) as paragraph (a)(2)(xi) and adding a new paragraph (a)(2)(x) to read as follows:

**§ 163.1 Definitions.**

\* \* \*

(a) *Records*— \* \* \*

(2) *Activities* \* \* \*

(x) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Bahrain Free Trade Agreement (BFTA), including a BFTA importer’s declaration.

\* \* \* \* \*

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

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

\* \* \* \* \*

IV. \* \* \*

§ 10.805 BFTA records that the importer may have in support of a BFTA claim for preferential tariff treatment, including an importer’s declaration.

§ 10.820 BFTA TPL certificate of eligibility.

§ 10.821 BFTA TPL declaration.

\* \* \* \* \*

**PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS**

13. 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.

14. Section 178.2 is amended by adding new listings “§§ 10.803,10.804, 10.818, and 10.821” to the table in numerical order to read as follows:

**§ 178.2 Listing of OMB control numbers.**

19 CFR Section	Description	OMB control No.
* * *	* * *	* * *
§§ 10.803,10.804, 10.818, and 10.821.	Claim for preferential tariff treatment under the U.S.-Bahrain Free Trade Agreement.	1651-0130
* * *	* * *	* * *

\* \* \* \* \*

W. RALPH BASHAM,  
*Commissioner,*  
*U.S. Customs and Border Protection.*

Approved: October 9, 2007

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

[Published in the Federal Register, October 16, 2007 (72 FR 58511)]

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## 19 CFR Chapter I

### CBP Dec. 07-82

#### TECHNICAL CORRECTIONS REGARDING THE ORGANIZATIONAL STRUCTURE OF U.S. CUSTOMS AND BORDER PROTECTION

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect changes in the organizational structure of CBP resulting from the establishment of the new Office of International Trade, as well as the nonmenclature changes effected by the transfer in 2003 of CBP to the Department of Homeland Security and the subsequent renaming of the U.S. Customs Service as CBP.

**DATE:** October 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jacinto P. Juarez, Jr., Regulations and Rulings, Office of International Trade, (202) 572-8752, or Michelle Garcia, Regulations and Rulings, Office of International Trade, (202) 572-8745.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 et seq., Pub. L. 107-296, (the "HSA"), establishing the Department of Homeland Security ("DHS"). Pursuant to section 403(1) of the HSA (6 U.S.C. 203(1)), the United States Customs Service was transferred from the Department of the Trea-

surey to DHS effective March 1, 2003. Under section 1502 of the HSA, the Customs Service was renamed as the “Bureau of Customs and Border Protection”. Subsequently, on April 23, 2007, a notice was published in the **Federal Register** (72 FR 20131) informing the public that DHS had changed the name of the Bureau of Customs and Border Protection to “U.S. Customs and Border Protection” effective March 31, 2007.

The HSA reserved customs revenue functions to the Department of the Treasury. Treasury Department Order No. 100–16 delegated general authority vested in the Secretary of the Treasury over customs revenue functions (with certain specified exceptions) to the Secretary of Homeland Security.

Section 402 of Title IV of the Security and Accountability for Every Port Act of 2006 (“SAFE Port Act”), Pub. L. 109–347, established a new Office of International Trade (OT) to be headed by an Assistant Commissioner within U.S. Customs and Border Protection (CBP). Section 402(d)(2)(A) and (B) of the SAFE Port Act specifically authorized the Commissioner of CBP to transfer the assets, functions, and personnel of the Office of Strategic Trade (OST) and the Office of Regulations and Rulings (ORR) to OT. Pursuant to his authority under section 402(d)(2)(C), the Commissioner authorized the transfer of certain assets, functions, or personnel within the Office of Field Operations (OFO) to the OT.

Prior to the establishment of OT on October 15, 2006, the functions of trade policy and program development were split among three offices within CBP: the Office of Strategic Trade, the Office of Regulations and Rulings, and the Office of Field Operations. The OT consolidates the trade policy, program development, and compliance measurement functions of CBP into one office without creating dual reporting mechanisms or overlapping and redundant management structures.

The OT includes all functions and staff from the former Office of Strategic Trade (OST) and the former Office of Regulations and Rulings (ORR), as well as designated national program managers and specialists, national analysis specialists from OFO Headquarters and the national account managers currently stationed at ports of entry.

The OT is responsible for the following functions:

- 1) Providing national strategic direction to facilitate legitimate trade while protecting the American economy from unfair trade practices.

- 2) Directing national enforcement responses through effective targeting of goods crossing the border as well as strict, swift punitive actions against companies participating in predatory trade practices.

- 3) Coordinating with international partners to ensure effective enforcement of textile admissibility issues as well as the enforcement of free trade agreement eligibility.

4) Cooperating with other U.S. agencies and like-minded foreign governments to achieve effective enforcement of intellectual property rights.

5) Maintaining effective internal controls over the revenue process.

6) Coordinating with other government agencies and international partners to identify risks to detect and prevent contaminated agricultural or food products from harming the American public or the nation's economy.

7) Promoting trade facilitation and partnership with the importing community and trade associations by streamlining the flow of legitimate shipments and fostering corporate self-governance as a means of achieving compliance with trade laws and regulations.

8) Managing a risk-based audit program to respond to allegations of commercial fraud and to conduct corporate reviews of internal controls to ensure importers comply with trade laws and regulations.

9) Providing legal tools to promote facilitation and compliance with customs, trade and border security requirements through: the issuance of all CBP regulations, legally binding rulings and decisions, informed compliance publications and structured programs for external CBP training and outreach on international trade laws and CBP regulations.

This document sets forth amendments to the CBP regulations (19 CFR chapter I) to reflect the new CBP organizational structure resulting from the creation of the Office of International Trade, as well as the transfer of the former U.S. Customs Service to DHS and the subsequent renaming of the Customs Service to CBP.

The amendments set forth in this document include the removal of certain provisions within Part 171 of the CBP regulations (specifically, paragraphs (b) and (c) of § 171.62 and § 171.63) relating principally to the role of the Department of the Treasury in the consideration of supplemental petitions for relief from fines, penalties, and forfeitures. These provisions are no longer necessary or appropriate due to the transfer of CBP to DHS, the delegation of authority over certain customs revenue functions from the Department of the Treasury to the DHS, and the delegation of certain authorities from DHS to CBP as set forth in Delegation Number 7010.3 dated May 11, 2006.

The CBP regulations contain a significant number of references to offices that either no longer exist or have a different functional context. The changes set forth in this document to correct these references are non-substantive and relate to internal agency organization matters.

### **INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE**

Because the technical corrections set forth in this document merely conform to the Homeland Security Act of 2002 and section 402 of the SAFE Port Act, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary under 5 U.S.C. 553(b)(B). In addition, these amendments concern matters relating to agency organization and personnel which are not subject to prior notice and comment procedures pursuant to 5 U.S.C. 553(a)(2) and (b)(A). For these same reasons, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

### **REGULATORY FLEXIBILITY ACT**

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

### **EXECUTIVE ORDER 12866**

These amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

### **SIGNING AUTHORITY**

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

### **LIST OF SUBJECTS**

19 CFR PART 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

### **AMENDMENTS TO CBP REGULATIONS**

For the reasons given above and under the authority of 19 U.S.C. 66 and 1624, chapter I of the CBP Regulations (19 CFR chapter I) is amended as follows:

1. For each section indicated in the “Section” column, remove the words indicated in the “Remove” column from wherever they appear in the section, and add, in their place, the words indicated in the “Add” column.

	Section	Remove	Add
1.	4.14(c)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
2.	4.14(c)	Customs Form 301	CBP Form 301
3.	4.14(c)	Customs Headquarters	CBP Headquarters
4.	4.14(c)	Customs	CBP
5.	4.14(f)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
6.	4.14(f)	Customs Headquarters	CBP Headquarters
7.	4.14(f)	Customs Office of Investigations	U.S. Immigration and Customs Enforcement
8.	4.14(f)	Customs	CBP
9.	4.14(i)(1)	Customs	CBP
10.	4.14(i)(1)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
11.	4.14(i)(1)	Customs Headquarters	CBP Headquarters
12.	4.80a(d)	U.S. Customs Service	U.S. Customs and Border Protection
13.	4.80a(d)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
14.	4.80a(d)	Customs Regulations	CBP Regulations
15.	4.80b(b)	United States Customs Service	U.S. Customs and Border Protection
16.	4.80b(b)	Entry Procedures and Carriers Branch	Cargo Security, Carriers & Immigration Branch, Office of International Trade
17.	10.37	Customs territory	customs territory
18.	10.37	Customs Form	CBP Form

19.	10.37	Commercial Rulings Division, Customs Headquarters	Commercial and Trade Facilitation Division, Office of International Trade, CBP Headquarters
20.	10.37	International Trade Compliance Division, Customs Headquarters	Border Security and Trade Compliance Division, Office of International Trade, CBP Headquarters
21.	10.236(b) Introductory text	Customs	CBP
22.	10.236(b)(1)	Customs Form 450	CBP Form 450
23.	10.236(b)(1)	Office of Field Operations, U.S. Customs Service	Office of International Trade, U.S. Customs and Border Protection
24.	10.256(b)(1)	Customs Form 449	CBP Form 449
25.	10.256(b)(1)	Office of Field Operations, U.S. Customs Service	Office of International Trade, U.S. Customs and Border Protection
26.	10.311(a)	U.S. Customs Service, Regulatory Audit Division	U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit
27.	10.311(a)	Customs Form 355	CBP Form 355
28.	10.311(b)	Regulatory Audit Division	Office of International Trade, Regulatory Audit
29.	10.311(b)	Customs Form 356	CBP Form 356
30.	10.311(b)	U.S. Customs Service, Regulatory Audit Division	U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit
31.	10.311(c)	U.S. Customs Service, Regulatory Audit Division	U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit
32.	10.311(e)	Customs Form 357	CBP Form 357
33.	12.39(b)(4)	Commercial Enforcement, Trade Compliance Division, at Customs Headquarters	Executive Director, Commercial Targeting and Enforcement, Office of International Trade, at CBP Headquarters

34.	12.39(e)(1)	Customs	CBP
35.	12.39(e)(1)	International Trade Compliance Division, U.S. Customs Service	Border Security and Trade Compliance Division, Office of International Trade, U.S. Customs and Border Protection
36.	19.4 heading	Customs and proprietor responsibility and supervision over warehouses	CBP and proprietor responsibility and supervision over warehouses
37.	19.4(b)(8)(iii)	Customs approval	CBP approval
38.	19.4(b)(8)(iii)	Customs Headquarters, Office of Regulations and Rulings	CBP Headquarters, Regulations and Rulings, Office of International Trade
39.	111.1	Office of Field Operations, United States Customs Service	Office of International Trade, U.S. Customs and Border Protection
40.	111.1	prepared and filed with Customs using	prepared and filed with CBP using
41.	111.1	activities involving transactions with Customs	activities involving transactions with CBP
42.	111.1	charges assessed or collected by Customs	charges assessed or collected by CBP
43.	111.1	documents intended to be filed with Customs	documents intended to be filed with CBP
44.	111.1	data received for transmission to Customs	data received for transmission to CBP
45.	111.1	factors which Customs will consider include	factors which CBP will consider include
46.	111.1	maintenance of current editions of the Customs Regulations	maintenance of current editions of CBP Regulations
47.	111.1	Custom issuances	CBP issuances
48.	111.1	Treasury Department	Department of Homeland Security
49.	111.1	U.S. Department of the Treasury	U.S. Department of Homeland Security
50.	111.5(a)	Treasury Department	Department of Homeland Security

51.	111.5(b)	Treasury Department	Department of Homeland Security
52.	111.13(f)	Trade Programs, Office of Field Operations, U.S. Customs Service	Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection
53.	111.13(f)	Customs	CBP
54.	111.13(f)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
55.	111.17(b)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
56.	111.17(c)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
57.	111.19(d)(2)	Customs	CBP
58.	111.19(d)(2)	Office of Field Operations	Office of International Trade
59.	111.19(d)(2)	Office of Field Operations, Customs Headquarters	Office of International Trade, CBP Headquarters
60.	111.19(e)	Office of Field Operations, Customs Headquarters	Office of International Trade, CBP Headquarters
61.	111.19(f) Introductory text	Office of Field Operations, U.S. Customs Service	Office of International Trade, U.S. Customs and Border Protection
62.	111.23(b)(2) Introductory text	Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131	Office of International Trade, Regulatory Audit, 2001 Cross Beam Dr., Charlotte, North Carolina 28217
63.	111.23(b)(2)(iii)	Director, Regulatory Audit Division, in Miami	Office of International Trade, Regulatory Audit, in Charlotte
64.	111.24	Regulatory Audit Division	Office of International Trade, Regulatory Audit
65.	111.25	Customs	CBP
66.	111.26	Treasury Department	Department of Homeland Security
67.	111.27	Regulatory Audit Division	Regulatory Audit

68.	111.29(b)(1)	Customs charges	customs charges
69.	111.29(b)(1)	Customs	CBP
70.	111.29(b)(1)	U.S. Customs Service	U.S. Customs and Border Protection
71.	111.30(c)	Office of Field Operations, U.S. Customs Service	Office of International Trade, U.S. Customs and Border Protection
72.	111.31(a)	Treasury Department	Department of Homeland Security
73.	111.31(b)	Treasury Department	Department of Homeland Security
74.	111.32	Treasury Department	Department of Homeland Security
75.	111.34 heading	Undue influence upon Treasury Department employees	Undue influence upon Department of Homeland Security employees
76.	111.34	Treasury Department	Department of Homeland Security
77.	111.38	Treasury Department	Department of Homeland Security
78.	111.51(a)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
79.	111.66	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
80.	111.69	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
81.	111.70	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
82.	111.71	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
83.	111.72	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
84.	111.74	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
85.	111.75	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
86.	111.76(b)	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
87.	111.77	Secretary of the Treasury	Secretary of Homeland Security, or his designee,

88.	111.81	Secretary of the Treasury	Secretary of Homeland Security, or his designee,
89.	113.14	International Trade Compliance Division	Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade
90.	113.15	International Trade Compliance Division	Border Security and Trade Compliance Division
91.	113.38(c)(1)	International Trade Compliance Division, Customs Headquarters	Border Security and Trade Compliance Division, CBP Headquarters
92.	113.38(c)(4)	International Trade Compliance Division, Customs Headquarters	Border Security and Trade Compliance Division, CBP Headquarters
93.	113.38(c)(4)	Customs officer	CBP officer
94.	113.38(c)(4) (except for last sentence)	Customs	CBP
95.	113.39(a) Introductory text	International Trade Compliance Division	Border Security and Trade Compliance Division
96.	113.39(b)	International Trade Compliance Division	Border Security and Trade Compliance Division
97.	133.0	United States Customs Service	U.S. Customs and Border Protection
98.	133.1(a)	U.S. Customs Service	U.S. Customs and Border Protection
99.	133.2 Introductory text	Intellectual Property Rights Branch, U.S. Customs Service	Intellectual Property Rights (IPR) & Restricted Merchandise Branch, U.S. Customs and Border Protection
100.	133.2(e) Introductory text	Customs	CBP
101.	133.2(f)	Customs will publish	CBP will publish
102.	133.2(f)	Customs will examine	CBP will examine

103.	133.2(f)	until Customs has made	until CBP has made
104.	133.2(f)	Customs will publish	CBP will publish
105.	133.4(a)	United States Customs Service	U.S. Customs and Border Protection
106.	133.4(a)	Customs officers	U.S. Customs and Border Protection Officers
107.	133.4(c)	United States Customs Service	U.S. Customs and Border Protection
108.	133.6 Introductory text	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch, CBP Headquarters
109.	133.6(b)	United States Customs Service	U.S. Customs and Border Protection
110.	133.7(a) Introductory text	Customs	CBP
111.	133.7(a) Introductory text	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch
112.	133.7(a)(3)	United States Customs Service	U.S. Customs and Border Protection
113.	133.7(b)	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch
114.	133.12 Introductory text	Intellectual Property Rights Branch, U.S. Customs Service	IPR & Restricted Merchandise Branch
115.	133.13(b)	United States Customs Service	U.S. Customs and Border Protection
116.	133.15 heading	Term of Customs trade name recordation	Term of CBP trade name recordation
117.	133.15	Intellectual Property Rights Branch	IPR & Restricted Merchandise Branch
118.	133.26	Customs custody	CBP custody
119.	133.26	Customs Form	CBP Form
120.	133.32 Introductory text	Customs protection	customs protection

121.	133.32 Introductory text	Intellectual Property Rights Branch, U.S. Customs Service	IPR & Restricted Mer- chandise Branch, U.S. Customs and Border Protection
122.	133.35(a)	United States Customs Service	CBP
123.	133.35(a)	Intellectual Property Rights Branch	IPR & Restricted Mer- chandise Branch
124.	133.35(b)(2)	United States Customs Service	U.S. Customs and Bor- der Protection
125.	133.36 Introductory text	Intellectual Property Rights Branch	IPR & Restricted Mer- chandise Branch
126.	133.36(b)	United States Customs Service	CBP
127.	133.36(b)	made payable to the United States Customs Service	made payable to U.S. Customs and Border Protection
128.	133.37(b)	Intellectual Property Rights Branch	IPR & Restricted Mer- chandise Branch
129.	133.37(c)(3)	United States Customs Service	U.S. Customs and Bor- der Protection
130.	133.43(d)(1)(ii)	Customs Headquarters	CBP Headquarters
131.	133.43(d)(1)(ii)	International Trade Compliance Division, Office of Regulations and Rulings	Border Security and Trade Compliance Divi- sion, Regulations and Rulings, Office of Inter- national Trade
132.	142.3a	Customs	CBP
133.	142.3a(d)	port director	Assistant Commis- sioner, Office of Interna- tional Trade, or his des- ignee
134.	142.3a(e)	port director	Assistant Commis- sioner, Office of Interna- tional Trade, or his des- ignee
135.	143.7(a)	Director, Trade Compliance	Executive Director, Trade Policy and Pro- grams, Office of Interna- tional Trade

136.	143.8	Director, Trade Compliance	Executive Director, Trade Policy and Programs, Office of International Trade
137.	143.8	Customs officer	CBP officer
138.	146.81(b)	Director, International Trade Compliance Division	Assistant Commissioner, Office of International Trade, or his designee
139.	146.83(a)	Director, International Trade Compliance Division	Executive Director, Regulations and Rulings, Office of International Trade
140.	146.83(a)	Customs	CBP
141.	151.12 Introductory text	Customs	CBP
142.	151.12(a)	Office of Field Operations, U.S. Customs Service	Office of Information and Technology, or his designee, U.S. Customs and Border Protection
143.	151.12(a)	Customs	CBP
144.	151.12(a)	U.S. Customs Laboratory Methods Manual	Customs and Border Protection Laboratory (CBPL) Methods
145.	151.12(a)	U.S. Customs Service	U.S. Customs and Border Protection
146.	151.12(a)	Customs Internet Web site: <a href="http://www.customs.gov">www.customs.gov</a> .	CBP Web site: <a href="http://www.cbp.gov">www.cbp.gov</a> .
147.	159.63(a)	Customs	CBP
148.	159.63(a)	Office of Regulations and Rulings	Office of Finance
149.	162.74(c)	Customs Headquarters, Office of Regulations and Rulings	Office of International Trade
150.	162.74(c)	Customs	CBP
151.	162.74(c)	Customs Headquarters	CBP Headquarters
152.	163.5(b)(1)	Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131	Regulatory Audit, U.S. Customs and Border Protection, 2001 Cross Beam Dr., Charlotte, North Carolina 28217

153.	163.5(b)(1)	Director of the Miami regulatory audit field office	Director of Regulatory Audit, Charlotte office
154.	163.5(b)(1)	Customs	CBP
155.	163.11(a)(5)	Director, Regulatory Audit Division at Customs Headquarters	Executive Director, Regulatory Audit, Office of International Trade, at CBP Headquarters
156.	163.11(b)	Customs	CBP
157.	163.11(b)	Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229	Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229
158.	163.12(b)(2)	Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131	Regulatory Audit, U.S. Customs and Border Protection, 2001 Cross Beam Dr., Charlotte, North Carolina 28217
159.	163.12(b)(2)	Regulatory Audit Division, Office of Strategic Trade, U.S. Customs Service, 909 SE First Avenue, Miami, Florida 33131	Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Ave., NW, Washington, DC 20229
160.	163.12(c)(1)	Miami regulatory audit field office	Charlotte regulatory audit field office
161.	163.12(c)(1)	Customs	CBP
162.	163.13(d)(1)	Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229	Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229
163.	163.13(d)(1)	Director, Regulatory Audit Division	Executive Director, Regulatory Audit
164.	163.13(d)(2)	Customs	CBP

165.	163.13(d)(2)	Director, Regulatory Audit Division, U.S. Customs Service, Washington DC 20229	Executive Director, Regulatory Audit, U.S. Customs and Border Protection, Office of International Trade, Washington DC 20229
166.	163.13(d)(2)	Director, Regulatory Audit Division	Executive Director, Regulatory Audit
167.	171.12 heading	Petitions acted on at Customs Headquarters	Petitions acted on at CBP Headquarters
168.	171.12	Office of Regulations and Rulings, Customs Headquarters	Regulations and Rulings, Office of International Trade, CBP Headquarters
169.	171.14	Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters	Director, Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade, CBP Headquarters, or his designee
170.	171.14	Customs	CBP
171.	171.62(a)	Office of Regulations and Rulings	Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade
172.	171.62(b) heading	Decisions of Customs Headquarters	Decisions of CBP Headquarters
173.	171.62(b)	Office of Regulations and Rulings, Customs Headquarters	Regulations and Rulings, Office of International Trade, CBP Headquarters
174.	171.62(b)	International Trade Compliance Division, Customs Headquarters	Border Security and Trade Compliance Division, CBP Headquarters
175.	Part 171, App. C, XIII	Brokers Compliance Branch, Office of Trade Compliance	Trade Policy and Programs, Office of International Trade
176.	172.14	International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters	Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade, CBP Headquarters

177.	172.14	Customs	CBP
178.	172.42(b) heading	Decisions of Customs Headquarters	Decisions of CBP Headquarters
179.	172.42(b)	Office of Regulations and Rulings, Customs Headquarters	Regulations and Rulings, Office of International Trade, CBP Headquarters
180.	172.42(b)	International Trade Compliance Division	Border Security and Trade Compliance Division, Regulations and Rulings
181.	172.42(c) heading	Authority of Assistant Commissioner	Authority of Executive Director
182.	172.42(c)	Assistant Commissioner, Office of Regulations and Rulings, or his designee	Executive Director, Regulations and Rulings, Office of International Trade, or his designee
183.	177.0	United States Customs Service	CBP
184.	177.0	any Customs Service field office	any CBP field office
185.	177.0	Customs Headquarters Office other than the Office of Regulations and Rulings	CBP Headquarters Office other than Regulations and Rulings, Office of International Trade
186.	177.1(d)(6)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
187.	177.1(d)(6)	United States Customs Service	U.S. Customs and Border Protection
188.	177.2(a)	Commissioner of Customs	Commissioner of Customs and Border Protection
189.	177.2(a)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade

190.	177.2(a)	National Commodity Specialist Division, U.S. Customs	National Commodity Specialist Division, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, New York, New York, 10119
191.	177.2(a)	Customs Service	Customs and Border Protection
192.	177.2(b)(2)(i)	relevant Customs and related laws	relevant customs and related laws
193.	177.2(b)(2)(ii)(C)	Commercial Rulings Division, U.S. Customs Service	Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection
194.	177.9(c)	Customs	CBP
195.	177.9(c)	Commissioner of Customs	Commissioner of Customs and Border Protection
196.	177.9(c)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
197.	177.13(b)(1)	Office of Regulations and Rulings, U.S. Customs Service	Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection
198.	177.22(b) Introductory text	Commercial Rulings Division	Commercial and Trade Facilitation Division, Regulations and Rulings
199.	177.22(b) Introductory text	U.S. Customs Service	U.S. Customs and Border Protection
200.	177.22(b) Introductory text	Customs	CBP
201.	177.22(b)(3)	Customs	CBP

202.	177.22(c)	Assistant Commissioner, Office of Regulations and Rulings	Executive Director, Regulations and Rulings, Office of International Trade
203.	177.22(c)	U.S. Customs Service	U.S. Customs and Border Protection
204.	177.26	Director, Office of Regulations and Rulings	Executive Director, Regulations and Rulings, Office of International Trade
205.	177.26	U.S. Customs Service	U.S. Customs and Border Protection
206.	181.22(b)(1)	Customs	CBP
207.	181.92(a)(3)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
208.	181.92(a)(3)	United States Customs Service	U. S. Customs and Border Protection
209.	181.92(a)(6)	National Commodity Specialist Division, United States Customs Service	National Commodity Specialist Division, U.S. Customs and Border Protection
210.	181.93(a)	Commissioner of Customs	Commissioner of Customs and Border Protection
211.	181.93(a)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
212.	181.93(a)	United States Customs Service, 6 World Trade Center, New York, NY 10048	U. S. Customs and Border Protection, One Penn Plaza, 10th Floor, New York, NY 10119
213.	181.100(a)(3)	Commissioner of Customs	Commissioner of Customs and Border Protection
214.	181.100(a)(3)	Office of Regulations and Rulings	Regulations and Rulings, Office of International Trade
215.	181.102(a)(1) Introductory text	Customs Headquarters	CBP Headquarters

216.	181.102(a)(1) Introductory text	Assistant Commis- sioner, Office of Regula- tions and Rulings, U.S. Customs Service	Executive Director, Regulations and Rul- ings, Office of Interna- tional Trade, U.S. Cust- oms and Border Protection
217.	191.7(c) heading	Review and action by Customs	Review and action by CBP
218.	191.7(c)(3)	Customs Headquarters	CBP Headquarters
219.	191.7(c)(3)	Duty and Refund Deter- mination Branch, Office of Regulations and Rul- ings	Entry Process and Duty Refunds Branch, Regu- lations and Rulings, Of- fice of International Trade
220.	191.8(d)	Customs Headquarters	CBP Headquarters
221.	191.8(d)	Duty and Refund Deter- mination Branch, Office of Regulations and Rul- ings	Entry Process and Duty Refunds Branch, Regu- lations and Rulings, Of- fice of International Trade
222.	191.8(e) heading	Review and action by Customs	Review and action by CBP
223.	191.8(e) Introductory text	Customs Headquarters	CBP Headquarters
224.	191.8(e)(2)	Customs Headquarters	CBP Headquarters
225.	191.8(e)(2)	Commercial Rulings Division	Entry Process and Duty Refunds Branch, Regu- lations and Rulings, Of- fice of International Trade
226.	191.8(g)(1)	Customs Headquarters	CBP Headquarters
227.	191.8(g)(1)	Duty and Refund Deter- mination Branch, Office of Regulations and Rul- ings	Entry Process and Duty Refunds Branch, Regu- lations and Rulings, Of- fice of International Trade
228.	191.8(g)(2)(ii)	Customs Headquarters	CBP Headquarters
229.	191.8(g)(2)(ii)	Duty and Refund Deter- mination Branch, Office of Regulations and Rul- ings	Entry Process and Duty Refunds Branch, Regu- lations and Rulings, Of- fice of International Trade

230.	191.11(c)	Duty and Refund Determination Branch, Office of Regulations and Rulings, Customs Headquarters	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade, CBP Headquarters
231.	191.32(c)(1)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
232.	191.36(d)	Customs	CBP
233.	191.36(d)	Customs Headquarters, Office of Field Operations, Office of Trade Operations	CBP Headquarters, Office of International Trade, Trade Policy and Programs
234.	191.36(d)	Customs Headquarters	CBP Headquarters
235.	191.61(d)(1)	Customs Headquarters	CBP Headquarters
236.	191.61(d)(1)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
237.	191.61(d)(2)	Customs Headquarters	CBP Headquarters
238.	191.61(d)(2)	Duty and Refund Determination Branch, Office of Regulations and Rulings	Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade
239.	191.61(d)(3) heading	Customs Headquarters	CBP Headquarters
240.	191.61(d)(3)	Customs Headquarters	CBP Headquarters
241.	191.91(g)	Customs Headquarters, Office of Field Operations, Office of Trade Operations	CBP Headquarters, Office of International Trade, Trade Policy and Programs
242.	191.91(g)	Customs Headquarters	CBP Headquarters
243.	191.92(h)	Customs Headquarters, Office of Field Operations, Office of Trade Operations	CBP Headquarters, Office of International Trade, Trade Policy and Programs
244.	191.92(h)	Customs Headquarters	CBP Headquarters

245.	191.156(d)	Office of Field Operations, Customs Headquarters	Office of International Trade, CBP Headquarters
246.	191.194(a)(1)	Customs Headquarters	CBP Headquarters
247.	191.194(a)(1)	Customs processing	CBP processing
248.	191.194(a)(2) Introductory text	Customs review	CBP review
249.	191.194(a)(2) Introductory text	Customs	CBP
250.	191.194(a)(2)(i)	Customs charges	customs charges
251.	191.194(a)(2)(i)	Customs	CBP
252.	191.194(c)	Customs	CBP
253.	191.194(d)	Customs	CBP
254.	191.194(e)(1)(ii)	Customs laws and regulations	customs laws and CBP regulations
255.	191.194(e)(2)	Customs	CBP
256.	191.194(f)(1)	Customs Headquarters, Office of Field Operations, Office of Trade Programs	CBP Headquarters, Trade Policy and Programs, Office of International Trade
257.	191.194(f)(1)	Customs Headquarters	CBP Headquarters
258.	191.194(f)(2)	Customs Headquarters, Office of Field Operations, Office of Trade Programs	CBP Headquarters, Trade Policy and Programs, Office of International Trade
259.	191.194(f)(2)	Customs	CBP
260.	Part 191, App. A, II, K	Customs Regulations	CBP Regulations
261.	Part 191, App. A, II, M, 6	Customs Regulations	CBP Regulations
262.	Part 191, App. A, III, D, 6	Customs Regulations	CBP Regulations
263.	Part 191, App. A, IV, I	Customs Regulations	CBP Regulations
264.	Part 191, App. A, IV, K, 6	Customs Regulations	CBP Regulations

265.	Part 191, App. A, V, I	Customs Regulations	CBP Regulations
266.	Part 191, App. A, V, K, 6	Customs Regulations	CBP Regulations
267.	Part 191, App. A, VI, I	Customs Regulations	CBP Regulations
268.	Part 191, App. A, VI, K, 6	Customs Regulations	CBP Regulations
269.	Part 191, App. A, VII, I	Customs Regulations	CBP Regulations
270.	Part 191, App. A, VII, K, 6	Customs Regulations	CBP Regulations
271.	Part 191, App. A, VIII, H	Customs Regulations	CBP Regulations
272.	Part 191, App. A, VIII, J, 6	Customs Regulations	CBP Regulations
273.	Part 191, App. A, IX, M, 6	Customs Regulations	CBP Regulations
274.	Part 191, App. A, X, J	Customs Regulations	CBP Regulations
275.	Part 191, App. A, X, L, 6	Customs Regulations	CBP Regulations
276.	Part 191, App. A, XI, Y, 6	Customs Regulations	CBP Regulations
277.	Part 191, App. A, XII, J	Customs Regulations	CBP Regulations
278.	Part 191, App. A, XII, L, 6	Customs Regulations	CBP Regulations
279.	Part 191, App. A, XIII, J	Customs Regulations	CBP Regulations
280.	Part 191, App. A, XIII, L, 6	Customs Regulations	CBP Regulations
281.	Part 191, App. A, XIV, I	Customs Regulations	CBP Regulations
282.	Part 191, App. A, XIV, K, 6	Customs Regulations	CBP Regulations
283.	Part 191, App. B, I	Customs Headquarters	CBP Headquarters
284.	Part 191, App. B, I	Customs issues	CBP issues

285.	Part 191, App. B, II COMPANY LETTERHEAD (Optional)	U.S. Customs Service, Duty and Refund Determination Branch	U.S. Customs and Border Protection, Entry Process and Duty Refunds, Regulations and Rulings, Office of International Trade
286.	Part 191, App. B, II COMPANY LETTERHEAD (Optional)	Customs Regulations	CBP Regulations
287.	Part 191, App. B, II NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT	Customs Regulations	CBP Regulations
288.	Part 191, App. B, II PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS	Customs Regulations	CBP Regulations
289.	Part 191, App. B, II CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED heading	CUSTOMS OFFICE	CBP OFFICE
290.	Part 191, App. B, II INVENTORY PROCEDURES	Customs Regulations	CBP Regulations
291.	Part 191, App. B, II BASIS OF CLAIM FOR DRAWBACK	Customs Regulations	CBP Regulations
292.	Part 191, App. B, II AGREEMENTS	Customs Regulations	CBP Regulations

293.	Part 191, App. B, III COMPANY LETTERHEAD (Optional)	U.S. Customs Service, Duty and Refund Determination Branch	U.S. Customs and Border Protection, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade
294.	Part 191, App. B, III NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT	Customs Regulations	CBP Regulations
295.	Part 191, App. B, III PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS	Customs Regulations	CBP Regulations
296.	Part 191, App. B, III CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED heading	CUSTOMS OFFICE	CBP OFFICE
297.	Part 191, App. B, III INVENTORY PROCEDURES	Customs Regulations	CBP Regulations
298.	Part 191, App. B, III BASIS OF CLAIM FOR DRAWBACK	Customs Regulations	CBP Regulations
299.	Part 191, App. B, III AGREEMENTS	Customs Regulations	CBP Regulations

300.	Part 191, App. B, IV COMPANY LETTERHEAD (Optional)	U.S. Customs Service, Duty and Refund Determination Branch	U.S. Customs and Border Protection, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade
301.	Part 191, App. B, IV NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT	Customs Regulations	CBP Regulations
302.	Part 191, App. B, IV PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS	Customs Regulations	CBP Regulations
303.	Part 191, App. B, IV CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED Heading	CUSTOMS OFFICE	CBP OFFICE
304.	Part 191, App. B, IV INVENTORY PROCEDURES	Customs Regulations	CBP Regulations
305.	Part 191, App. B, IV BASIS OF CLAIM FOR DRAWBACK	Customs Regulations	CBP Regulations
306.	Part 191, App. B, IV AGREEMENTS	Customs Regulations	CBP Regulations

307.	Part 191, App. B, V COMPANY LETTERHEAD (Optional)	U.S. Customs Service, Duty and Refund Determination Branch	U.S. Customs and Border Protection, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade
308.	Part 191, App. B, V NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT	Customs Regulations	CBP Regulations
309.	Part 191, App. B, V PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS	Customs Regulations	CBP Regulations
310.	Part 191, App. B, V CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED heading	CUSTOMS OFFICE	CBP OFFICE
311.	Part 191, App. B, V INVENTORY PROCEDURES	Customs Regulations	CBP Regulations
312.	Part 191, App. B, V BASIS OF CLAIM FOR DRAWBACK	Customs Regulations	CBP Regulations
313.	Part 191, App. B, V AGREEMENTS	Customs Regulations	CBP Regulations

**PART 171 – FINES, PENALTIES, AND FORFEITURES**

2. The authority citation for Part 171, CBP Regulations, continues to read as follows:

**AUTHORITY:** 18 U.S.C. 983; 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. A. 320.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614.

\* \* \* \* \*

**§ 171.62 [Amended]**

3. Section 171.62 is amended by removing paragraphs (c) and (d).

**§ 171.63 [Amended]**

4. Section 171.63 is removed and reserved.

Dated: October 12, 2007

W. RALPH BASHAM  
*Commissioner,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, (72 FR 59166)]

*General Notice*

**PROPOSED COLLECTION; COMMENT REQUEST  
Cost Submission**

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Cost Submission. 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 December 17, 2007, to be assured of consideration.

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

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed U.S. 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 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) 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:** Cost Submission

**OMB Number:** 1651-0028

**Form Number:** CBP Form-247

**Abstract:** CBP Form-247 is used by importers to furnish cost information to CBP which serves as the basis to establish the appraised value of imported merchandise.

**Abstract:** CBP Form-247 is used by importers to furnish cost information to CBP which serves as the basis to establish the appraised value of imported merchandise.

**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, Institutions

**Estimated Number of Respondents:** 1,000

**Estimated Time Per Respondent:** 50 hours

**Estimated Total Annual Burden Hours:** 50,000

**Estimated Total Annualized Cost on the Public:** N/A

Dated: October 11, 2007

TRACEY DENNING,  
*Agency Clearance Officer,  
Information Services Group.*

[Published in the Federal Register, October 18, 2007 (72 FR 59105)]

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**PROPOSED COLLECTION; COMMENT REQUEST  
CBP Regulations for Customhouse Brokers**

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the CBP Regulations for Customhouse Brokers. 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 December 17, 2007, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. 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 U.S. 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: (a) 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:** CBP Regulations for Customhouse Brokers

**OMB Number:** 1651-0034

**Form Number:** N/A

**Abstract:** This information is collected to ensure regulatory compliance for Customhouse brokers.

**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:** 6,933

**Estimated Time Per Respondent:** 43 minutes hours

**Estimated Total Annual Burden Hours:** 5,017

**Estimated Total Annualized Cost on the Public:** \$961,833

Dated: October 11, 2007

TRACEY DENNING,  
*Agency Clearance Officer,  
Information Services Group.*

[Published in the Federal Register, October 18, 2007 (72 FR 59104)]

**PROPOSED COLLECTION; COMMENT REQUEST**  
**Declaration of Ultimate Consignee That Articles Were**  
**Exported for Temporary Scientific or Educational Purposes**

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes. 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 December 17, 2007, 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, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the U.S. 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 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) 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:** Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes

**OMB Number:** 1651-0036

**Form Number:** N/A

**Abstract:** The "Declaration of Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes" is used to provide duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes.

**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:** 55

**Estimated Time Per Respondent:** 30 minutes

**Estimated Total Annual Burden Hours:** 27

**Estimated Total Annualized Cost on the Public:** N/A

Dated: October 11, 2007

TRACEY DENNING,  
*Agency Clearance Officer,  
Information Services Group.*

[Published in the Federal Register, October 18, 2007 (72 FR 59104)]

**PROPOSED COLLECTION; COMMENT REQUEST**  
**Commercial Invoice**

**ACTION:** Notice and request for comments.

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

**DATES:** Written comments should be received on or before December 17, 2007, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. 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 U.S. 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 (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) ap-

proval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Commercial Invoice

**OMB Number:** 1651-0090

**Form Number:** N/A

**Abstract:** The collection of the Commercial Invoice is necessary for the proper assessment of duties. The invoice(s) is attached to the CBP Form 7501. The information, which is supplied by the foreign shipper, is used to ensure compliance with statutes and regulations.

**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, Institutions

**Estimated Number of Respondents:** 38,500

**Estimated Number of Respondents:** 46,500,000

**Estimated Time Per Respondent:** 3.35 hours

**Estimated Total Annual Burden Hours:** 130,200

**Estimated Total Annualized Cost on the Public:** N/A

Dated: October 11, 2007

TRACEY DENNING,  
*Agency Clearance Officer,  
Information Services Group.*

[Published in the Federal Register, October 18, 2007 (72 FR 59103)]

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**PROPOSED COLLECTION; COMMENT REQUEST  
Canadian Border Boat Landing Permit**

**ACTION:** Notice and request for comments.

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

**DATES:** Written comments should be received on or before December 17, 2007, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. 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 U.S. 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 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) 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:** Canadian Border Boat Landing Permit

**OMB Number:** 1651-0108

**Form Number:** Form I-68

**Abstract:** This collection involves information from individuals who desire to enter the United States from Canada in a small pleasure craft.

**Current Actions:** This is an extension of a currently approved information collection.

**Affected Public:** Individuals or Households

**Estimated Number of Respondents:** 68,000

**Estimated Time Per Respondent:** 10 minutes

**Estimated Total Annual Burden Hours:** 11,288

**Estimated Annual Cost:** \$1,088,000

Dated: October 11, 2007

TRACEY DENNING,  
*Agency Clearance Officer,  
Information Services Group.*

[Published in the Federal Register, October 18, 2007 (72 FR 59103)]

**Announcement of National Customs Automation Program  
Test Concerning Automated Commercial Environment (ACE)  
Entry Summary, Accounts and Revenue Capabilities**

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

**ACTION:** General notice.

**SUMMARY:** This document announces Custom and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test concerning Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue capabilities. These new capabilities will provide enhanced account management functions for ACE Portal Accounts. This notice also announces that the types of Portal Accounts in ACE have been expanded. This notice invites public comment concerning any aspect of the planned test, describes the eligibility, procedural and documentation requirements for voluntary participation in the test, and outlines the development and evaluation methodology to be used in the test.

**DATES:** The effective date of this notice is October 18, 2007. The test will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the announced test may be submitted during the test period to the address set forth below.

**ADDRESS:** Comments concerning this notice should be submitted via email to [CBP.CSPO@hs.gov](mailto:CBP.CSPO@hs.gov).

**FOR FURTHER INFORMATION CONTACT:** Operational aspects for importers and brokers: Ruthanne Kenneally at (202) 863-6064. Operational aspects for carriers: James Swanson at [james.d.swanson@hs.gov](mailto:james.d.swanson@hs.gov). Systems or automation aspects: ACE HELPDESK at [ACE.HELPDESK@customs.treas.gov](mailto:ACE.HELPDESK@customs.treas.gov).

**SUPPLEMENTARY INFORMATION:****Background****I. ACE Test Programs****A. ACE Portal Accounts**

On May 1, 2002, the former U.S. Customs Service, now U.S. Customs and Border Protection (CBP), published a General Notice in the **Federal Register** (67 FR 21800) announcing a plan to conduct a National Customs Automation Program (NCAP) test of the first phase of the Automated Commercial Environment (ACE). The test was described as the first step toward the full electronic processing of commercial importations with a focus on defining and establishing an importer's account structure. The General Notice announced that importers and authorized parties would be allowed to access their customs data via a web-based Account Portal. The notice set forth eligibility criteria for companies interested in establishing Account Portals accessible through ACE. Subsequent General Notices revised the eligibility criteria (see General Notice published in the **Federal Register** on February 1, 2005 (67 FR 5199)) and expanded the universe of eligible participants in the ACE test and the types of ACE Portal Accounts.

On February 4, 2004, CBP published two General Notices in the **Federal Register** that established ACE Truck Carrier Accounts and opened the application period for authorized importers and their designated brokers to participate in the NCAP test to implement the Periodic Monthly Statement (PMS) process (see 69 FR 5360 and 69 FR 5362, respectively). Brokers were invited to establish Broker Accounts in ACE in order to participate in the NCAP test to implement PMS. In both of the February 4, 2004 General Notices, CBP advised participants they could designate only one person as the Account Owner for the company's ACE Portal account. The Account Owner was identified as the party responsible for safeguarding the company's ACE Portal Account information, controlling all disclosures of that information to authorized persons, authorizing user access to the ACE Portal Account information, and ensuring the strict control of access by authorized persons to the ACE Portal information.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) inviting customs brokers to participate in the ACE Portal test generally and informing interested parties that once they had been notified by CBP that their request to participate in the ACE Portal test had been accepted, they would be asked to sign and submit a Terms and Conditions document. CBP subsequently contacted those participants and asked them to also sign and submit an ACE Power of Attorney form and an Additional Account/Account Owner Information form.

## **B. Terms and Conditions for Access to the ACE Portal**

On May 16, 2007, CBP published a General Notice in the **Federal Register** (72 FR 27632) announcing a revision of the terms and conditions that must be followed as a condition for access to the ACE Portal. These terms and conditions supersede and replace the Terms and Conditions document previously signed and submitted to CBP by ACE Portal Trade Account Owners. The notice specified that no further action would be required by ACE Portal Trade Account Owners for those ACE Portal Accounts already established with CBP with the proper Account Owner listed. The principal changes to the ACE Terms and Conditions included a revised definition of "Account Owner" to permit either an individual or a legal entity to serve in this capacity, new requirements relating to providing notice to CBP when there has been a material change in the status of the Account and/or Trade Account Owner, and explanatory provisions as to how the information from a particular account may be accessed through the ACE Portal when that account is transferred to a new owner.

## **C. ACE Non-Portal Accounts**

CBP has also permitted certain parties to participate in specified ACE tests without establishing ACE Portal Accounts ("Non-Portal Accounts"). On October 24, 2005, CBP published a General Notice in the **Federal Register** (70 FR 61466) announcing that importers could establish ACE non-portal accounts and participate in the PMS test under certain conditions. On March 29, 2006, CBP published another General Notice in the **Federal Register** (71 FR 15756) announcing that truck carriers who do not have ACE Truck Carrier Accounts may use third parties to transmit truck manifest information on their behalf electronically in the ACE Truck Manifest system via Electronic Data Interface (EDI) messaging.

## **II. Test Concerning New ACE Entry Summary, Accounts and Revenue (ESAR) Capabilities**

This document announces CBP's plan to conduct a new test concerning ACE Entry Summary, Accounts and Revenue (ESAR) capabilities which will provide enhanced account management functions for ACE Portal Accounts and expand the universe of ACE account types. Features of these new ACE functions, as well as the eligibility, procedural and documentation requirements for voluntary participation in the test, are described below.

### **A. ACE Portal Account Enhancements**

ACE is now the lead system for CBP-required master data elements (e.g., company name, address, point of contact) as well as related reference files (e.g., country code, port code, manufacturer ID, gold currency exchange rate and conversion calculator). See ACE

Systems of Record Notice (71 FR 3109), published in the **Federal Register** on January 19, 2006. This means that the creation and maintenance of specified master data elements will originate in ACE and will be distributed to other CBP systems such as the Automated Commercial System (ACS).

#### **B. Importer Portal Accounts**

Importer Portal Accounts will have the ability to create and maintain specified importer data via the ACE Portal. Filers will also have the ability to create a new CBP Form 5106 (Importer ID Input Record) via the ACE Portal or the Automated Broker Interface (ABI). For the present time, and until CBP's e-bond functionality is deployed, importers who have a continuous bond on file who want to update their CBP Form 5106 information will need to submit the CBP Form 5106, along with the paper bond rider, to the CBP Revenue Division in Indianapolis. Additionally, importers and filers will have the ability to view applicable Participating Government Agency (PGA) licenses, permits and certificates via the ACE Portal. Eligibility requirements for Importer Portal Accounts remain unchanged. See 67 FR 21800, May 1, 2002.

#### **C. Broker Portal Accounts**

Broker Portal Accounts will have access to the following functionalities through the ACE Portal: maintenance of organizational demographic data (e.g., addresses, points of contact, etc.); license and permit qualifiers; data on managing officials; employee lists; relationships to individual licensed brokers; points of contact and address information (at filer code level, for each local broker permit and each port covered by the local permit, and for the national broker permit). Broker Portal Accounts will also be able to generate the following reports: local and national broker permits on an annual basis; broker employee lists; open broker permits; and delinquent permit user fees by port or broker. Broker Portal Accounts with a filer code may be used to create the CBP Form 5106 via the ACE Portal and can view applicable PGA licenses, permits and certificates. Eligibility requirements for Broker Portal Accounts remain unchanged. See 69 FR 5362, February 4, 2004.

#### **D. Truck Carrier Portal Accounts**

In addition to its current capabilities, a Truck Carrier Portal Account will now be able to view any applicable PGA licenses, permits and certificates and have access to the following functionalities through the ACE Portal: maintenance of addresses and points of contact; and pre-registered truck conveyance, equipment, shipper, and consignee data. A Truck Carrier Portal Account will also be able to create and maintain driver accounts and search for and correlate existing driver accounts to their Carrier Account (see also Section III.D

of this document). Eligibility requirements for Truck Carrier Portal Accounts remain unchanged. See 69 FR 5360, February 4, 2004.

### **III. Expanded ACE Portal Account Types**

The ACE Portal will now provide for the following additional Portal Account types: Carriers (all modes: air, rail, sea); Cartman; Lighterman; Driver/Crew; Facility Operator; Filer; Foreign Trade Zone (FTZ) Operator; Service Provider; and Surety. To be eligible to establish an ACE Portal Account, interested parties must be able to connect to the Internet.

#### **A. Application Process**

The term “application,” as used throughout this notice, is defined as a statement of intent from an interested party to establish an ACE Portal Account. Anyone wishing to establish an ACE Portal Account with access to the ACE Portal must submit an application to CBP (available at [www.CBP.gov](http://www.CBP.gov)) either via U.S. regular mail to the address noted on [www.CBP.gov](http://www.CBP.gov) or via e-mail to [ACE.Applications@hs.gov](mailto:ACE.Applications@hs.gov). In addition to the eligibility requirements described in this Notice, the application must include the information set forth under the applicable business category, as well as the name, address, and e-mail address of a point of contact to receive further information. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified and given the opportunity to resubmit their application. Upon receipt of a complete application, CBP will contact the applicant with regard to any additional information that may be required. Participants will be required to acknowledge a continuing obligation to provide CBP with any updates or changes to the information originally submitted.

Each participant must designate an individual or an entity as the ACE Portal Trade Account Owner on the application. The Trade Account Owner will be responsible for the information entered into the participant’s ACE Portal Account. The ACE Portal Trade Account Owner will be responsible for safeguarding the ACE Portal account information, controlling all disclosures of that information to authorized persons, authorizing user access to the ACE Portal account, and ensuring that access by authorized persons to the ACE Portal information is strictly controlled (see Terms and Conditions of Portal Access, 72 FR 27632, published May 16, 2007).

All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law (see 19 USC 1431(c)).

As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

## **B. Carriers (all modes: air, rail, and sea)**

To establish a Carrier (all modes: air, rail and sea) Portal Account, the following information is required:

- a. SCAC (Standard Carrier Alpha Code), International Air Transport Association (IATA), or International Civil Aviation Organization (ICAO) designator (as applicable); and
- b. Method of transportation (i.e., air, rail, vessel).

Initially, Carriers (all modes: air, rail and sea) who establish ACE Portal Accounts will only have access to the static data and basic account profile information necessary to establish their portal account. Any new ACE Portal Account functionalities that may be made available to Carriers on a test basis will be announced in a future General Notice published in the **Federal Register**. At that time, CBP will deploy an initial group of participants for participation in the NCAP test.

It is anticipated that Carrier Portal Accounts will eventually derive the following benefits:

- Access to operational data through the ACE Portal;
- Electronic interaction with CBP;
- Receipt of status messages concerning Account transactions;
- Access to integrated Account data from multiple system sources;
- Ability to manage and disseminate information in an efficient and secure manner; and
- Ability to electronically transmit a manifest and obtain release of its cargo, crew, conveyances, and equipment via the ACE Portal or Electronic Data Interchange (EDI) messaging.

## **C. Cartman or Lighterman Portal Account**

To establish a Cartman or Lighterman Portal Account, the following information is required:

- a. Employer Identification Number (EIN) or Social Security Number (SSN);
- b. CBP issued license number; and
- c. CBP-issued license number.

Once the Portal Account is established, Cartmen or Lightermen will be able to maintain addresses, points of contact, employee information and manage its official data via the Portal.

## **D. Driver/Crew Portal Accounts**

Drivers/Crew who are interested in having their information entered into ACE are encouraged to contact: (1) a truck carrier with EDI or an ACE Portal Account; or (2) a third party provider (this includes importers, brokers, and service centers) with an ACE Portal Account.

Although Drivers/Crew are not required to establish an ACE Portal Account to transact business with CBP, Drivers/Crew who elect to

have their own ACE Portal Account with a Driver/Crew view will be required to submit the following information:

- a. Name;
- b. Date of Birth; and
- c. Commercial Driver's License (CDL).

**E. Bonded Warehouse, Container Freight Station (CFS), and Container Examination Station (CES) Facility Operator Portal Accounts**

To establish a Bonded Warehouse, Container Freight Station (CFS), or Container Examination Station (CES) Facility Operator Portal Account, the following information is required:

- a. Employer Identification Number (EIN) or Social Security Number (SSN);
- b. Facilities Information and Resources Management System (FIRMS) code; and
- c. Bond number.

Once the Portal Account is established, Facility Operators will be able to maintain Facility Operator addresses, points of contact, facility points of contact, and employee lists at the facility level, as well as store and view pertinent documents pertaining to the facility via the ACE Portal.

**F. Filer Portal Accounts**

To establish a Filer Portal Account, the Filer must provide their Filer Code to CBP. Once the Filer Portal Account is established, Filers will be able to maintain addresses and points of contact (at the filer code level and port level).

**G. Foreign Trade Zone (FTZ) Operator**

To establish a FTZ Operator Portal Account, the following information is required:

- a. Employer Identification Number (EIN) or Social Security Number (SSN);
- b. Facilities Information and Resources Management System (FIRMS) code;
- c. Zone Number;
- d. Sub-zone Number (if applicable);
- e. Site Number; and
- f. Bond Number.

Once the Portal Account is established, FTZ Operators will have the ability to maintain FTZ Operator addresses, points of contact, and certifications pertinent to the site. FTZ Operator Portal Account Owners will also have the ability to view all sites operated by the FTZ Operator, as well as view and store documents pertinent to the site.

## **H. Service Provider Portal Account**

To establish a Service Provider Portal Account, the following information is required:

- a. Software Vendor: Filer Code and/or SCAC;
- b. Service Bureau/Center: Filer code and/or SCAC;
- c. Port Authority: SCAC;
- d. Preparer: SCAC; and
- e. Surety agent: Social Security Number (SSN) or Employer Identification Number (EIN) and Filer code.

Once the Service Provider Portal Account is established, Service Providers will be able to maintain addresses and points of contact via the ACE Portal.

## **I. Surety**

To establish a Surety Portal Account, the following information is required:

- a. Surety Code; and
- b. Employer Identification Number (EIN).

Once the Portal Account is established, sureties will be able to access the following functionality via the Portal: maintain addresses; points of contact; and Corporate Surety Power of Attorney data; and view Continuous bond data.

## **IV. Suspension of Regulations**

During the testing of the Entry Summary, Accounts and Revenue (ESAR) functionality, CBP is suspending provisions in part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) relating to the filing of the CBP Form 5106, as well as provisions in 19 CFR part 111 relating to current procedures that are done via paper by customs brokers and that will now be done electronically. Absent any alternate procedures set forth above in the description of the test, the current regulations apply.

## **V. Misconduct Under the Test**

An ACE test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations.
- Failure to deposit duties or fees in a timely manner.
- Misuse of the ACE Portal.
- Engagement in any unauthorized disclosure or access to the ACE Portal.

- Engagement in any activity which interferes with the successful evaluation of the new technology.

Suspensions for misconduct will be administered by the Executive Director, Commercial Targeting and Enforcement, Office of International Trade, CBP Headquarters. A notice proposing suspension will be provided in writing to the participant. Such notice will apprise the participant of the facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin.

Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of International Trade, within 15 calendar days of the notification date. Should the participant appeal the notice of proposed suspension, the participant must address the facts or conduct charges contained in the notice and state how compliance will be achieved. In cases of non-payment, late payment, willful misconduct or where public health interests or safety is concerned, the suspension may be effective immediately.

## VI. Test Evaluation Criteria

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, implementation and conduct of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the Customs Bulletin as required by 19 CFR 101.9(b).

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis.
2. Questionnaires from both trade participants and CBP addressing such issues as:
  - Workload impact (workload shifts/volume, cycle times, etc.).
  - Cost savings (staff, interest, reduction in mailing costs, etc.).
  - Policy and procedure accommodation.
  - Trade compliance impact.
  - Problem resolution.
  - System efficiency.
  - Operational efficiency.
  - Other issues identified by the participant group.

Date: October 15, 2007

DANIEL BALDWIN,  
Assistant Commissioner,  
Office of International Trade.

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, October 17, 2007*

The following documents of U.S. 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.

SANDRA L. BELL,  
*Executive Director,  
Regulations and Rulings Office of Trade.*

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## GENERAL NOTICE

### **REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF 1,1-DI (TERT-BUTYLPEROXY) CYCLOHEXANE**

**AGENCY:** Bureau of Customs and Border Protection; Department of Homeland Security.

**ACTION:** Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of 1,1-Di (tert-butylperoxy) cyclohexane.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of 1,1-Di (tert-butylperoxy) cyclohexane under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on July 25, 2007, in Volume 41, Number 31, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after (60 DAYS FROM PUBLICATION DATE).

**FOR FURTHER INFORMATION CONTACT:** Kelly Herman, Tariff Classification and Marking Branch: (202) 572–8713.

**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, notice proposing to revoke one ruling letter pertaining to the tariff classification of 1,1-Di (tert-butylperoxy) cyclohexane was published in the July 25, 2007, CUSTOMS BULLETIN, Volume 41, Number 31. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in the 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 decision on this notice.

In HQ 967885, CBP ruled that 1,1-Di (tert-butylperoxy) cyclohexane was classified in heading 3815, HTSUS, which provides

for "Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. The 1,1-Di (tert-butylperoxy) cyclohexane is properly classified in heading 2909, HTSUS, which provides for "Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 967885 and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of 1,1-Di (tert-butylperoxy) cyclohexane according to the analysis contained in Headquarters Ruling Letter H004099, set forth as an attachment. 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), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

**DATED:** October 10, 2007

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H004099  
October 10, 2007  
CLA-2: OT:RR:CTF:TCM H004099 KSH  
CATEGORY: Classification  
TARIFF NO.: 2909.60.5000

FREDERIC D. VAN ARNAM, ESQ.  
BARNES, RICHARDSON & COLBURN,  
475 Park Avenue South  
25th Floor  
New York, New York, 10016

RE: Revocation of HQ 967885, dated February 1, 2006

DEAR MR. VAN ARNAM:

This is in reply to your correspondence on behalf of your client, DeGussa Initiators, Inc., dated November 21, 2006, in which you have requested reconsideration of Headquarters Ruling Letter (HQ) 967885, dated February 1, 2006. In HQ 967885, a substance identified as "CH-50-WO" was classified under subheading 3815.90.5000 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Reaction initiators, reaction

accelerators and catalytic preparations, not elsewhere specified or included: Other: Other.”

In your request for reconsideration, you have provided additional information that the white oil present in the product is used solely for safety during transport and handling and has no other use. Thus, you maintain that the CH-50-WO should be classified in subheading 2909.60.5000, HTSUS, which provides for “Ethers, ether- alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives: Alcohol peroxides, ether peroxides, ketone peroxides and their halogenated, sulfonated, nitrated or nitrosated derivatives: Other.” In accordance with your request for reconsideration of HQ 967885, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

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, notice of the proposed action was published on July 25, 2007, in Volume 41, Number 31, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

HQ 967885 is a Headquarters ruling on Protest 4101-05-100247. In accordance with *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 4101-05-100247 was final on both the protestant and CBP. Therefore, this decision has no effect on those entries.

**FACTS:**

The merchandise was described in HQ 967885 as follows:

The merchandise at issue is identified as CH-50-WO. It is described as 1,1-Di (tert-butylperoxy) cyclohexane, non-aromatic cyclanic alcohol peroxide in a 50% white mineral oil diluent. The diluent is required for safety in transport. When the white mineral oil is added to the 1,1-Di (tert-butylperoxy) cyclohexane (“CH”), it becomes “CH-50-WO.” Protestant states that CH-50-WO is used commercially for the polymerization of monomers, crosslinking of polymers, curing of unsaturated polyester resins and graft polymerization.

A lab report issued by the CBP Laboratories and Scientific Services on September 16, 2004, confirmed that the merchandise is a mixture of 1,1-Di (tert-butylperoxy) cyclohexane in white mineral oil. The report also determined that the CH-50-WO is [a ketone peroxide of the other type described in Note 1(e) to Chapter 29, HTSUS, and] a reaction initiator of the kind described in EN 3815(b)(i), HTSUS, as a free radical catalyst.

In a lab report issued by the CBP Laboratories and Scientific Services on April 5, 2007, the lab noted in relevant part, that the normal and usual mode of transport and storage of peroxide is in a solvent. The lab also determined that there was no indication that CH-50-WO is for specific use rather than general use.

**ISSUE:**

Whether CH-50-WO is classified in heading 2909, HTSUS, as a peroxide or its derivative or heading 3815, HTSUS, as a reaction initiator.

## LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). 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 GRI may then be applied.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 2909, HTSUS, provides for “Ethers, ether- alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives.” Except where the context otherwise requires, Chapter 29, Note 1(e), HTSUS, provides for, among other goods, separate chemically defined organic compounds dissolved in solvents “provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use.”

Heading 3815, HTSUS, provides for “reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included.” The EN to heading 3815, HTSUS, reads in relevant part:

This heading covers preparations which initiate or accelerate certain chemical processes. Products which retard these processes **are not included**.

These preparations fall broadly into two groups.

\* \* \* \*

(b) Those of the second group are mixtures with a basis of compounds whose nature and proportions vary according to the chemical reaction to be catalysed. These preparations include:

(i) “ free radical catalysts ” (e.g., organic solutions of organic peroxides or of azo compounds, redox mixtures);

\* \* \* \*

The preparations of the second group are generally used in the course of manufacture of polymers.

This heading **does not include**:

\* \* \* \*

(b) Separate chemically defined compounds (Chapter 28 or 29).

\* \* \* \*

Subject to the five exceptions listed in Chapter Note 1(a) to Chapter 38, HTSUS, the Chapter Note also states that the Chapter does not cover separate chemically defined elements or compounds.

1,1-Di (tert-butylperoxy) cyclohexane is a separate chemically defined compound that is dissolved in a solution of white mineral oil. There is no dispute that the white mineral oil is added for reasons of safety or transport. However, in accordance with Chapter 29, Note 1(e), HTSUS, the addition of the solution of white mineral oil must not render the product particularly suitable for specific rather than for general use. If the white mineral oil renders the product suitable for a specific use then the CH-50-WO is classified in Chapter 38, HTSUS.

1,1-Di (tert-butylperoxy) cyclohexane is high in energy content and is available in various grades of purity. It may be mixed with varying percentages of differing diluents. In the merchandise at issue, the 1,1-Di (tert-butylperoxy) cyclohexane is mixed with white mineral oil. Mineral oil is a by-product in the distillation of petroleum to produce gasoline. It is a chemically inert, transparent, colorless oil composed mainly of alkanes and cyclic paraffins, related to white petrolatum. Mineral oil is a substance of relatively low value, and it is produced in very large quantities. See [www.Wikipedia.org](http://www.Wikipedia.org).

It is mineral oil's property of non-reactivity that is being utilized when it is added to 1,1-Di (tert-butylperoxy) cyclohexane for shipment. By placing the organic peroxide in an environment of mineral spirits, contact with any water vapor in the atmosphere (i.e. container) is minimized. Peroxides such as the merchandise at issue react readily with water, thereby destroying the original product. In HQ 967885, we determined that the white mineral oil rendered the merchandise suitable for specific use in the production of polymers and therefore it was excluded from Chapter 29, HTSUS, by virtue of Chapter Note 1(e) to Chapter 29, HTSUS. However, based on the additional information submitted in conjunction with the request for reconsideration as well as corroborating information supplied by CBP's Office of Laboratory and Scientific Services, we have determined that the mineral oil does not function as an initiator nor does it participate in reactions such as cross-linking, cross-branching, or any other chemical reaction which would affect the rate of polymer formation as we had previously determined.

In accordance with Chapter Note 1(e) to Chapter 29, HTSUS, and Chapter Note 1(a) to Chapter 38, HTSUS, CH-50-WO is classified in Chapter 29, HTSUS, because the white mineral oil is used for reasons of safety in manufacturing, transport, handling and storage, but does not render the product particularly suitable for specific use in the production of polymers.

**HOLDING:**

CH-50-WO is classified in heading 2909, HTSUS. It is provided for in subheading 2909.60.5000, HTSUS, which provides for "Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives: Alcohol peroxides, ether peroxides, ketone peroxides and their halogenated, sulfonated, nitrated or nitrosated derivatives: Other." The general column one 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 internet at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

HQ 967885, dated February 1, 2006, 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.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

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**REVOCAION OF SEVEN RULING LETTERS AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN ELECTRIC  
CANDLE LAMPS**

**AGENCY:** Bureau of Customs and Border Protection; Department of Homeland Security.

**ACTION:** Notice of revocation of seven ruling letters and revocation of treatment relating to the classification of a certain electric candle lamps.

**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) is revoking seven ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain electric candle lamps. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 41, No. 28, on July 5, 2007. One comment in support of the proposed revocation was received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after [60 days from the date of publication of notice in the Customs Bulletin].

**FOR FURTHER INFORMATION CONTACT:** Sasha Kalb, Tariff Classification and Marking Branch, at (202) 572–8791.

**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, a notice was published in the Customs Bulletin, Vol. 41, No. 28, on July 5, 2007, proposing to revoke seven ruling letters relating to the tariff classification of a certain electric candle lamps. One comment was received in response to the notice which supports the proposed revocation. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. No further rulings have been found. 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 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with 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 this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking New York Ruling Letters (NY) L86200, dated August 2, 2005; NY L87499, dated October 3, 2005; NY M83666, dated May 22, 2006; NY L83074, dated March 4, 2005; NY L86672, dated August 30, 2005; NY R00050, dated January 23, 2005; and NY L89316, dated January 11, 2006 to reflect the proper tariff classification of the merchandise under head-

ing 9405, HTSUS, specifically in subheading 9405.40.8000, HTSUSA, which provides for, *inter alia*: “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other”, pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) H003212; H003214; H003215; H003216; H003217; H003357; and H003863 (Attachments A-G). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: October 10, 2007

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H003212  
October 10, 2007  
**CLA-2 OT:RR:CTF:TCM H003212 ADK**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9405.40.8000

MS. FRANCINE MARCOUX  
HAMPTON DIRECT, INC.  
350 Pioneer Drive  
P.O. Box 1199  
Williston, VT 05495

**RE:** Classification of an Electric Candle Lamp from China; Revocation of New York Ruling Letter (NY) L86200, dated August 2, 2005.

DEAR MS. MARCOUX:

On August 2, 2005, the Bureau of Customs and Border Protection (CBP), National Commodity Specialist Division (NCSA), issued New York Ruling Letter (NY) L86200, in which your electric candle lamp was classified as a “portable electric lamp” under subheading 8513.10.4000 of the Harmonized Tariff Schedule United States Annotated (HTSUSA). We have since reviewed NY L86200, and find it to be in error.

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 was published on

July 5, 2007, in the Customs Bulletin, Volume 41, No. 28. One comment in support of the proposed revocation was received in response to this notice.

**FACTS:**

The subject merchandise, the Smart Candle SKU number 50220, is an electric candle lamp from China. It consists of a cylindrical frosted-glass holder measuring approximately 4  $\frac{3}{4}$  inches in height by 2  $\frac{1}{2}$  inches in diameter. This holder contains a removable, battery-operated plastic candle-like lamp, measuring about 3 inches in height, which when activated is designed to simulate real candlelight.

**ISSUE:**

What is the proper classification under the Harmonized Tariff Schedule of the United States (HTSUS) for the electric candle light lamp?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

8513	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
8513.10	Lamps:
8513.10.40	Other
	* * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.40	Other electric lamps and lighting fittings:
9405.40.80	Other
	* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80. The relevant ENs are as follows:

The EN to heading 8513, HTSUS (EN 8513), provides, in pertinent part:

The term “portable lamps” refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person, or are designed to be attached to a por-

table article or object. They usually have a handle or a fastening device and may be recognized by their particular shapes and their light weight. . . .

(Emphasis in original)

\* \* \*

The EN to heading 9405, HTSUS (EN 9405), provides, in pertinent part:

**(I) Lamps and Light Fittings Not Elsewhere Specified or Included**

(5) **Portable lamp** (other than those of heading 85.13), e.g., hurricane lamps; stable lamps; hand lanterns; miners' lamps; quarrymen's lamps.

(Emphasis in original)

\* \* \*

It is undisputed that the subject article is a lamp within the meaning of both headings 8513 and 9405, HTSUS. In NY L86200, CBP determined that the lamp was "portable" as required by heading 8513, HTSUS, and therefore classifiable under subheading 8513.10.4000, HTSUSA. We now find that determination to be in error.

Lamps such as the subject article are classifiable in heading 8513, HTSUS, provided that they are "portable" within the meaning of the terms of the heading. EN 8513, defines "portable" as referring only to those lamps which are "designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object." Classification of the subject merchandise, therefore requires a threshold analysis of heading 8513, HTSUS. If designed for use when carried in the hand, i.e. portable, it will be classified under heading 8513, HTSUS. If not, the electric candle lamp is excluded from heading 8513, HTSUS, and classifiable instead under the basket provision for lamps, heading 9405, HTSUS.

"Whether an article is 'specially designed' or 'specially constructed' for a particular purpose may be determined by an examination of the article itself, its capabilities, as well as its actual use or uses. One must look at both the structural and auxiliary design features, as neither by itself is determinative." *Western States Import v. United States*, 20 C.I.T. 736 (1996). In the present matter, we must determine whether the electric candle lamp has any particular design features that adapt it for the stated purpose of being either carried in the hand or on the person, or being attached to a portable article or object. See Headquarters Ruling Letter (HQ) 965714, November 15, 2002. These design features include, but are not limited to, handles, fastening devices, ergonomic shapes capable of fitting easily into the hand, and use of light weight materials.

Although the subject lamp is lightweight, it does not possess any other design feature to indicate that it is designed for use when carried in the hand or on the person, or is designed to be attached to a portable article or object. The article's shape is such that it is not easily carried in the hand nor does it have a handle or fastening device. Instead, the article's design indicates that it is intended for placement on a flat surface such as a table, for an illuminated candlelight effect. As a result, it is excluded from heading 8513, HTSUS and classifiable instead under heading 9405, HTSUS.

One comment was received in response to the publication of the proposed revocation. The comment "fully supports" CBP's decision to reclassify the subject merchandise under subheading 9405.40.8000, HTSUSA. Specifically, the commenter "agrees that consideration of design features . . . that adapt

[a lamp] for a stated purpose and for what use(s) the article is marketed and sold should be significant factors for rendering future decisions vis-à-vis HTS 8513 v. 9504.”

**HOLDING:**

By application of GRI 1, the portable candle lamp is classifiable under heading 9405, HTSUS. Specifically, it is classifiable under subheading 9405.40.8000, HTSUSA, which provides for: “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other.” The column one, general rate of duty is 3.9 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY L86200, dated August 2, 2005 is hereby revoked. In accordance with 19 USC § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,

HQ H003214

October 10, 2007  
**CLA-2 OT:RR:CTF:TCM H003214 ADK**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9405.40.80

TROY CRAGO  
ATICO INTERNATIONAL USE, INC.  
501 South Andrews Avenue  
Ft. Lauderdale, FL 33301

**RE:** Classification of the Electric Tea Light Lamps from China; Revocation of New York Ruling Letter (NY) L87499, dated October 3, 2005.

DEAR MR. CRAGO:

On October 3, 2005, the Bureau of Customs and Border Protection (CBP), National Commodity Specialist Division (NCSA), issued New York Ruling Letter (NY) L87499, in which your electric tea light lamp was classified as a “portable electric lamp” under subheading 8513.10.4000 of the Harmonized Tariff Schedule United States Annotated (HTSUSA). We have since reviewed NY L87499, and find it to be in error.

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 was published on July 5, 2007, in the Customs Bulletin, Volume 41, No. 28. One comment in support of the proposed revocation was received in response to this notice.

**FACTS:**

The subject merchandise, item number W089GA00002, is a battery operated Light Emitting Diode (LED) lamp in the form of a tea light candle. It features a push-button light switch that, when activated, lights a faux flame.

**ISSUE:**

What is the proper classification under the Harmonized Tariff Schedule of the United States (HTSUS) for the electric candle light lamp?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

8513	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
8513.10	Lamps:
8513.10.41	Other
	* * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.40	Other electric lamps and lighting fittings:
9405.40.80	Other
	* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. The relevant ENs are as follows:

The EN to heading 8513, HTSUS (EN 8513), provides, in pertinent part:

The term “portable lamps” refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object. They usually have a handle or a fastening device and may be recognized by their particular shapes and their light weight. . . . (Emphasis in original)

\* \* \*

The EN to heading 9405, HTSUS (EN 9405), provides, in pertinent part:

**(I) Lamps and Light Fittings Not Elsewhere Specified or Included**

(5) **Portable lamp (other than those of heading 85.13)**, e.g., hurricane lamps; stable lamps; hand lanterns; miners' lamps; quarrymen's lamps.

(Emphasis in original)

\* \* \*

It is undisputed that the subject article is a lamp within the meaning of both headings 8513 and 9405, HTSUS. In NY L87499, CBP determined that the lamp was "portable" as required by heading 8513, HTSUS, and therefore classifiable under subheading 8513.10.4000, HTSUSA. We now find that determination to be in error.

Lamps such as the subject article are classifiable in heading 8513, HTSUS, provided that they are "portable" within the meaning of the terms of the heading. EN 8513, defines "portable" as referring only to those lamps which are "designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object." Classification of the subject merchandise, therefore requires a threshold analysis of heading 8513, HTSUS. If designed for use when carried in the hand, i.e. portable, it will be classified under heading 8513, HTSUS. If not, the electric candle lamp is excluded from heading 8513, HTSUS, and classifiable instead under the basket provision for lamps, heading 9405, HTSUS.

"Whether an article is 'specially designed' or 'specially constructed' for a particular purpose may be determined by an examination of the article itself, its capabilities, as well as its actual use or uses. One must look at both the structural and auxiliary design features, as neither by itself is determinative." *Western States Import v. United States*, 20 C.I.T. 736 (1996). In the present matter, we must determine whether the electric tea light lamp has any particular design features that adapt it for the stated purpose of being either carried in the hand or on the person, or being attached to a portable article or object. See Headquarters Ruling Letter (HQ) 965714, November 15, 2002. These design features include, but are not limited to, handles, fastening devices, ergonomic shapes capable of fitting easily into the hand, and use of light weight materials.

Although the subject lamp is lightweight, it does not possess any other design feature to indicate that it is designed for use when carried in the hand or on the person, or is designed to be attached to a portable article or object. The article's shape is such that it is not easily carried in the hand nor does it have a handle or fastening device. Instead, the article's design indicates that it is intended for placement on a flat surface such as a table, for an illuminated candlelight effect. As a result, it is excluded from heading 8513, HTSUS and classifiable instead under heading 9405, HTSUS.

One comment was received in response to the publication of the proposed revocation. The comment "fully supports" CBP's decision to reclassify the subject merchandise under subheading 9405.40.8000, HTSUSA. Specifically, the commenter "agrees that consideration of design features...that adapt [a lamp] for a stated purpose and for what use(s) the article is marketed and sold should be significant factors for rendering future decisions vis-à-vis HTS 8513 v. 9504."

**HOLDING:**

By application of GRI 1, the electric tea light is classifiable under heading 9405, HTSUS. Specifically, it is classifiable under subheading 9405.40.8000, HTSUSA, which provides for: "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other." The column one, general rate of duty is 3.9 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY L87499, dated October 3, 2005 is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT C]

HQ H003215  
October 10, 2007  
**CLA-2 OT:RR:CTF:TCM H003215 ADK**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9405.40.8000

MS. LORIANNE ALDINGER  
RITE AID CORPORATION  
P.O. Box 3165  
Harrisburg, PA 17105

**RE:** Classification of an Electric Candle Lamp from China; Revocation of New York Ruling Letter (NY) M83666, dated May 22, 2006.

DEAR MS. ALDINGER:

On May 22, 2006, the Bureau of Customs and Border Protection (CBP), National Commodity Specialist Division (NCS), issued New York Ruling Letter (NY) M83666, in which your electric candle lamp was classified as a "portable electric lamp" under subheading 8513.10.4000 of the Harmonized Tariff Schedule United States Annotated (HTSUSA). We have since reviewed NY M83666, and find it to be in error.

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 was published on July 5, 2007, in the Customs Bulletin, Volume 41, No. 28. One comment in support of the proposed revocation was received in response to this notice.

**FACTS:**

The item in question is a Light Emitting Diode (LED) candle lamp, model number 945449. The battery operated LED candle lamp measures 3" by 4" and has an on/off switch on the bottom side. According to NY M83666, the item is designed for placement on a flat surface such as a table.

**ISSUE:**

What is the proper classification under the Harmonized Tariff Schedule of the United States (HTSUS) for the electric candle light lamp?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

- 8513            Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
- 8513.10            Lamps:
- 8513.10.42            Other
- \*            \*            \*
- 9405            Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.40            Other electric lamps and lighting fittings:
- 9405.40.80            Other
- \*            \*            \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. The relevant ENs are as follows:

The EN to heading 8513, HTSUS (EN 8513), provides, in pertinent part:

The term “portable lamps” refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object. They usually have a handle or a fastening device and may be recognized by their particular shapes and their light weight. . . .

(Emphasis in original)

\*            \*            \*

The EN to heading 9405, HTSUS (EN 9405), provides, in pertinent part:

**(I) Lamps and Light Fittings Not Elsewhere Specified or Included**

(5) **Portable lamp (other than those of heading 85.13)**, e.g., hurricane lamps; stable lamps; hand lanterns; miners' lamps; quarrymen's lamps.

(Emphasis in original)

\* \* \*

It is undisputed that the subject article is a lamp within the meaning of both headings 8513 and 9405, HTSUS. In NY M83666, CBP determined that the lamp was "portable" as required by heading 8513, HTSUS, and therefore classifiable under subheading 8513.10.4000, HTSUSA. We now find that determination to be in error.

Lamps such as the subject article are classifiable in heading 8513, HTSUS, provided that they are "portable" within the meaning of the terms of the heading. EN 8513, defines "portable" as referring only to those lamps which are "designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object." Classification of the subject merchandise, therefore requires a threshold analysis of heading 8513, HTSUS. If designed for use when carried in the hand, i.e. portable, it will be classified under heading 8513, HTSUS. If not, the electric candle lamp is excluded from heading 8513, HTSUS, and classifiable instead under the basket provision for lamps, heading 9405, HTSUS.

"Whether an article is 'specially designed' or 'specially constructed' for a particular purpose may be determined by an examination of the article itself, its capabilities, as well as its actual use or uses. One must look at both the structural and auxiliary design features, as neither by itself is determinative." *Western States Import v. United States*, 20 C.I.T. 736 (1996). In the present matter, we must determine whether the candle lamp has any particular design features that adapt it for the stated purpose of being either carried in the hand or on the person, or being attached to a portable article or object. See Headquarters Ruling Letter (HQ) 965714, November 15, 2002. These design features include, but are not limited to, handles, fastening devices, ergonomic shapes capable of fitting easily into the hand, and use of light weight materials.

Although the subject lamp is lightweight, it does not possess any other design feature to indicate that it is designed for use when carried in the hand or on the person, or is designed to be attached to a portable article or object. The article's shape is such that it is not easily carried in the hand nor does it have a handle or fastening device. Instead, the article's design indicates that it is intended for placement on a flat surface such as a table, for an illuminated candlelight effect. As a result, it is excluded from heading 8513, HTSUS and classifiable instead under heading 9405, HTSUS.

One comment was received in response to the publication of the proposed revocation. The comment "fully supports" CBP's decision to reclassify the subject merchandise under subheading 9405.40.8000, HTSUSA. Specifically, the commenter "agrees that consideration of design features . . . that adapt [a lamp] for a stated purpose and for what use(s) the article is marketed and sold should be significant factors for rendering future decisions vis-à-vis HTS 8513 v. 9504."

#### **HOLDING:**

By application of GRI 1, the candle lamp is classifiable under heading 9405, HTSUS. Specifically, it is classifiable under subheading 9405.40.8000, HTSUSA, which provides for: "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included;

illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other.” The column one, general rate of duty is 3.9 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY M83666, dated May 22, 2006, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H003216  
October 10, 2007  
**CLA-2 OT:RR:CTF:TCM H003216 ADK**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9405.40.8000

RANDY WILLIAMS  
SEASONS USA, INC.  
18644 E. Powers Lane  
Aurora, CO 80015

**RE:** Classification of the Light-Up Safety Candle; Revocation of New York Ruling Letter (NY) L83074, dated March 4, 2005.

DEAR MR. WILLIAMS:

On March 4, 2005, the Bureau of Customs and Border Protection (CBP), National Commodity Specialist Division (NCSA), issued New York Ruling Letter (NY) L83074, in which your Light-Up Safety Candle was classified as a “portable electric lamp” under subheading 8513.10.4000 of the Harmonized Tariff Schedule United States Annotated (HTSUSA). We have since reviewed NY L83074, and find it to be in error.

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 was published on July 5, 2007, in the Customs Bulletin, Volume 41, No. 28. One comment in support of the proposed revocation was received in response to this notice.

**FACTS:**

The subject article is a battery-operated cylindrical candle-shaped plastic lamp, style number CI017. It measures approximately 3 ¼ inches in height by 1 ½ inches in diameter and has a flame-shaped top that is lit by a bottom switch mechanism. This article, which is advertised as a safety light, is designed for use in a Jack-O’-Lantern.

**ISSUE:**

What is the proper classification under the Harmonized Tariff Schedule of the United States (HTSUS) for the electric candle light lamp?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

- 8513            Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
- 8513.10            Lamps:
- 8513.10.43            Other
- \*            \*            \*
- 9405            Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.40            Other electric lamps and lighting fittings:
- 9405.40.80            Other
- \*            \*            \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. The relevant ENs are as follows:

The EN to heading 8513, HTSUS (EN 8513), provides, in pertinent part:

The term “portable lamps” refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object. They usually have a handle or a fastening device and may be recognized by their particular shapes and their light weight. . . .

(Emphasis in original)

\*            \*            \*

The EN to heading 9405, HTSUS (EN 9405), provides, in pertinent part:

**(I) Lamps and Light Fittings Not Elsewhere Specified or Included**

(5) **Portable lamp (other than those of heading 85.13)**, e.g., hurricane lamps; stable lamps; hand lanterns; miners' lamps; quarrymen's lamps.

(Emphasis in original)

\* \* \*

It is undisputed that the subject article is a lamp within the meaning of both headings 8513 and 9405, HTSUS. In NY L83074, CBP determined that the lamp was "portable" as required by heading 8513, HTSUS, and therefore classifiable under subheading 8513.10.4000, HTSUSA. We now find that determination to be in error.

Lamps such as the subject article are classifiable in heading 8513, HTSUS, provided that they are "portable" within the meaning of the terms of the heading. EN 8513, defines "portable" as referring only to those lamps which are "designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object." Classification of the subject merchandise, therefore requires a threshold analysis of heading 8513, HTSUS. If designed for use when carried in the hand, i.e. portable, it will be classified under heading 8513, HTSUS. If not, the electric candle lamp is excluded from heading 8513, HTSUS, and classifiable instead under the basket provision for lamps, heading 9405, HTSUS.

"Whether an article is 'specially designed' or 'specially constructed' for a particular purpose may be determined by an examination of the article itself, its capabilities, as well as its actual use or uses. One must look at both the structural and auxiliary design features, as neither by itself is determinative." *Western States Import v. United States*, 20 C.I.T. 736 (1996). In the present matter, we must determine whether the Light-Up Safety Candle has any particular design features that adapt it for the stated purpose of being either carried in the hand or on the person, or being attached to a portable article or object. See Headquarters Ruling Letter (HQ) 965714, November 15, 2002. These design features include, but are not limited to, handles, fastening devices, ergonomic shapes capable of fitting easily into the hand, and use of light weight materials.

Although the subject lamp is lightweight, it does not possess any other design feature to indicate that it is designed for use when carried in the hand or on the person, or is designed to be attached to a portable article or object. The article's shape is such that it is not easily carried in the hand nor does it have a handle or fastening device. Instead, the article's design indicates that it is intended for placement on a flat surface such as a table, for an illuminated candlelight effect. As a result, it is excluded from heading 8513, HTSUS and classifiable instead under heading 9405, HTSUS.

One comment was received in response to the publication of the proposed revocation. The comment "fully supports" CBP's decision to reclassify the subject merchandise under subheading 9405.40.8000, HTSUSA. Specifically, the commenter "agrees that consideration of design features . . . that adapt [a lamp] for a stated purpose and for what use(s) the article is marketed and sold should be significant factors for rendering future decisions vis-à-vis HTS 8513 v. 9504."

**HOLDING:**

By application of GRI 1, the portable candle lamp is classifiable under heading 9405, HTSUS. Specifically, it is classifiable under subheading 9405.40.8000, HTSUSA, which provides for: "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere speci-

fied or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other.” The column one, general rate of duty is 3.9 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY L83074, dated March 4, 2005 is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H003217  
October 10, 2007  
**CLA-2 OT:RR:CTF:TCM H003217 ADK**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9405.40.8000

MS. IRIT HORN  
FLOWER DESIGN LLC  
11909 Stonewood Lane  
Rockville, MD 20852

**RE:** Classification of the Light Emitting Diode (LED) Light Candle Light and the Rechargeable Tea Light Candle; Revocation of New York Ruling Letter (NY) L86672, dated August 30, 2005.

DEAR MS. HORN:

On August 30, 2005, the Bureau of Customs and Border Protection (CBP), National Commodity Specialist Division (NCSA), issued New York Ruling Letter (NY) L86672, in which your LED candle light was classified as a candle under subheading 3406.00.0000, Harmonized Tariff Schedule United States Annotated (HTSUSA), which provides for “candles, tapers and the like.” Your Rechargeable Tea Light Candle was classified as a “portable electric lamp” under subheading 8513.10.4000 of the HTSUSA. We have since reviewed NY L86672 and find it to be in error.

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 was published on July 5, 2007, in the Customs Bulletin, Volume 41, No. 28. One comment in support of the proposed revocation was received in response to this notice.

**FACTS:**

Two separate articles were submitted for classification in NY L86672. The first, the LED Light Candle, consisted of a translucent pillar-shaped wax candle and a battery-powered light emitting diode (LED). The translucent pillar-shaped wax candle was hollowed out on the bottom to receive the

LED. Upon entry, the LED was not inserted in the candle but was packed in the same box. In NY L86672, we determined that the wax pillar and LED were a set for classification purposes, and that the portable wax pillar imparted the essential character to the set.

The second article, the Rechargeable Tea Light Candle, consisted of a translucent, pillar-shaped wax lamp that was hollowed out on top to hold a tea light candle. The wax pillar also contained a rechargeable LED that illuminated the candle with varying colors. The portable wax lamp containing an LED, wax tea light candle and adaptor was put up for sale in a white paperboard box. In NY L86672, we determined that the wax pillar, LED and tea light were a set for classification purposes and that the portable wax pillar imparted the essential character to the set.

**ISSUE:**

What is the proper classification under the Harmonized Tariff Schedule of the United States (HTSUS) for the LED Light Candle and the Rechargeable Tea Light Candle?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

- 8513            Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnets), other than lighting equipment of heading 8512; parts thereof:
- 8513.10            Lamps:
- 8513.10.44            Other
- \*            \*            \*
- 9405            Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.40            Other electric lamps and lighting fittings:
- 9405.40.80            Other
- \*            \*            \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. The relevant ENs are as follows:

The EN to heading 8513, HTSUS (EN 8513), provides, in pertinent part:

The term “portable lamps” refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object. They usually have a handle or a fastening device and may be recognized by their particular shapes and their light weight. . . .

(Emphasis in original)

\* \* \*

The EN to heading 9405, HTSUS (EN 9405), provides, in pertinent part:

**(I) Lamps and Light Fittings Not Elsewhere Specified or Included**

(5) **Portable lamp (other than those of heading 85.13)**, e.g., hurricane lamps; stable lamps; hand lanterns; miners’ lamps; quarrymen’s lamps.

(Emphasis in original)

\* \* \*

In NY L86672, CBP considered classification the LED Light Candle and the Rechargeable Tea Light Candle. In both cases, we concluded that the articles were sets according to GRI 3(b)<sup>1</sup>, with the wax pillar imparting the essential character. We now find this conclusion to be in error. The two articles were comprised of wax pillars, each of which housed a battery-operated LED. These items functioned together to form a small lamp. The fact that the lamps were made-up of more than one component did not render them sets for classification purposes. We now find that the LED Light Candle and the Rechargeable Tea Light Candle are classifiable as lamps, according to GRI 1. At issue is whether they satisfy the definition of lamp under heading 8513, or 9405, HTSUS.

Generally, lamps are classifiable in heading 8513, HTSUS, provided that they are “portable” within the meaning of the terms of the heading. EN 8513, defines “portable” as referring only to those lamps which are “designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object.” Classification of the subject merchandise, therefore requires a threshold analysis of heading 8513, HTSUS. If designed for use when carried in the hand, i.e. portable, they will be classified under heading 8513, HTSUS. If not, the lamps are excluded from heading 8513, HTSUS, and classifiable instead under the basket provision for lamps, heading 9405, HTSUS.

“Whether an article is ‘specially designed’ or ‘specially constructed’ for a particular purpose may be determined by an examination of the article itself, its capabilities, as well as its actual use or uses. One must look at both the structural and auxiliary design features, as neither by itself is determinative.” *Western States Import v. United States*, 20 C.I.T. 736 (1996). In the present matter, we must determine whether the LED Light Candle and the Rechargeable Tea Light have any particular design features that adapt

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<sup>1</sup>GRI 3(b) provides, in pertinent part: “. . . goods put up in sets for retail sale . . . shall be classified as if they consisted of the material or component which gives them their essential character.”

them for the stated purpose of being either carried in the hand or on the person, or being attached to a portable article or object. See Headquarters Ruling Letter (HQ) 965714, November 15, 2002. These design features include, but are not limited to, handles, fastening devices, ergonomic shapes capable of fitting easily into the hand, and use of light weight materials.

Although the subject lamps are lightweight, they do not possess any other design feature to indicate that they are designed for use when carried in the hand or on the person, or is designed to be attached to a portable article or object. The article's shapes are such that they are not easily carried in the hand nor do they have handles or fastening devices. Instead, the design of each article indicates that they are intended for placement on a flat surface such as a table, for an illuminated candlelight effect. As a result, they are excluded from heading 8513, HTSUS and classifiable instead under heading 9405, HTSUS.

One comment was received in response to the publication of the proposed revocation. The comment "fully supports" CBP's decision to reclassify the subject merchandise under subheading 9405.40.8000, HTSUSA. Specifically, the commenter "agrees that consideration of design features . . . that adapt [a lamp] for a stated purpose and for what use(s) the article is marketed and sold should be significant factors for rendering future decisions vis-à-vis HTS 8513 v. 9504."

**HOLDING:**

By application of GRI 1, the LED Light Candle is classifiable under heading 9405, HTSUS. Specifically, it is classifiable under subheading 9405.40.8000, HTSUSA, which provides for: "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other." The column one, general rate of duty is 3.9 percent *ad valorem*.

By application of GRI 1, the Rechargeable Tea Light Candle is classifiable under heading 9405, HTSUS. Specifically, it is classifiable under subheading 9405.40.8000, HTSUSA, which provides for: "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other." The column one, general rate of duty is 3.9 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY L86672, dated August 30, 2005, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

## [ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H003357

October 10, 2007

**CLA-2 OT:RR:CTF:TCM H003357 ADK****CATEGORY:** Classification**TARIFF NO.:** 9405.40.8000

MS. SHELLY L. HESS  
N.I. LOGISTICS AMERICAN CORPORATION  
12480 NE Marx Street  
Portland, OR 97230

**RE:** Classification of the Flameless Wax Candle Lamp from China; Revocation of New York Ruling Letter (NY) R00050, dated January 23, 2004.

DEAR MS. HESS:

On January 23, 2004, the Bureau of Customs and Border Protection (CBP), National Commodity Specialist Division (NCSD), issued New York Ruling Letter (NY) R00050 to you on behalf of Pacific China Industries, Ltd., in which a flameless wax candle lamp was classified as a “portable electric lamp” under subheading 8513.10.4000 of the Harmonized Tariff Schedule United States Annotated (HTSUSA). We have since reviewed NY R00050, and find it to be in error.

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 was published on July 5, 2007, in the Customs Bulletin, Volume 41, No. 28. One comment in support of the proposed revocation was received in response to this notice.

**FACTS:**

The subject merchandise, the Flameless Wax Candle, is a cylindrical-shaped scented-wax lamps that measure approximately in the range of 3 to 6 inches in height by 3 inches in diameter. Each lamp houses a battery-operated Light Emitting Diode (LED) light. The Flameless Wax Candles are designed for to be used on such surfaces as the dinner table, the patio, or the porch.

**ISSUE:**

What is the proper classification under the Harmonized Tariff Schedule of the United States (HTSUS) for the electric candle light lamp?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

8513 Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:

8513.10 Lamps:

8513.10.45 Other

\* \* \*

9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included:

9405.40 Other electric lamps and lighting fittings:

9405.40.80 Other

\* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. The relevant ENs are as follows:

The EN to heading 8513, HTSUS (EN 8513), provides, in pertinent part:

The term “portable lamps” refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object. They usually have a handle or a fastening device and may be recognized by their particular shapes and their light weight. . . .

(Emphasis in original)

\* \* \*

The EN to heading 9405, HTSUS (EN 9405), provides, in pertinent part:

**(1) Lamps and Light Fittings Not Elsewhere Specified or Included**

(5) **Portable lamp (other than those of heading 85.13)**, e.g., hurricane lamps; stable lamps; hand lanterns; miners’ lamps; quarrymen’s lamps.

(Emphasis in original)

\* \* \*

It is undisputed that the subject article is a lamp within the meaning of both headings 8513 and 9405, HTSUS. In NY R00050, CBP determined that the lamp was “portable” as required by heading 8513, HTSUS, and therefore classifiable under subheading 8513.10.4000, HTSUSA. We now find that determination to be in error.

Lamps such as the subject article are classifiable in heading 8513, HTSUS, provided that they are “portable” within the meaning of the terms of the heading. EN 8513, defines “portable” as referring only to those lamps which are “designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object.” Classification of the subject merchandise, therefore requires a threshold analysis of heading 8513, HTSUS. If designed for use when carried in the hand, i.e. portable, it will be classified under heading 8513, HTSUS. If not, the electric candle lamp is excluded from heading 8513, HTSUS, and classifiable instead under the basket provision for lamps, heading 9405, HTSUS.

“Whether an article is ‘specially designed’ or ‘specially constructed’ for a particular purpose may be determined by an examination of the article itself, its capabilities, as well as its actual use or uses. One must look at both the structural and auxiliary design features, as neither by itself is determinative.” Western States Import v. United States, 20 C.I.T. 736 (1996). In the present matter, we must determine whether the flameless wax candle lamp has any particular design features that adapt it for the stated purpose of being either carried in the hand or on the person, or being attached to a portable article or object. See Headquarters Ruling Letter (HQ) 965714, November 15, 2002. These design features include, but are not limited to, handles, fastening devices, ergonomic shapes capable of fitting easily into the hand, and use of light weight materials.

Although the subject lamp is lightweight, it does not possess any other design feature to indicate that it is designed for use when carried in the hand or on the person, or is designed to be attached to a portable article or object. The article’s shape is such that it is not easily carried in the hand nor does it have a handle or fastening device. Instead, the article’s design indicates that it is intended for placement on a flat surface such as a table, for an illuminated candlelight effect. As a result, it is excluded from heading 8513, HTSUS and classifiable instead under heading 9405, HTSUS.

One comment was received in response to the publication of the proposed revocation. The comment “fully supports” CBP’s decision to reclassify the subject merchandise under subheading 9405.40.8000, HTSUSA. Specifically, the commenter “agrees that consideration of design features . . . that adapt [a lamp] for a stated purpose and for what use(s) the article is marketed and sold should be significant factors for rendering future decisions vis-à-vis HTS 8513 v. 9504.”

**HOLDING:**

By application of GRI 1, the portable candle lamp is classifiable under heading 9405, HTSUS. Specifically, it is classifiable under subheading 9405.40.8000, HTSUSA, which provides for: “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other.” The column one, general rate of duty is 3.9 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY R00050, January 23, 2004, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H003863  
October 10, 2007  
**CLA-2 OT:RR:CTF:TCM H003863 ADK**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9405.40.8000

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

**RE:** Classification of the Light Emitting Diode (LED) Pumpkin Light; Revocation of New York Ruling Letter (NY) L89316, dated January 11, 2006.

DEAR MR. STINSON:

On January 11, 2006, the Bureau of Customs and Border Protection (CBP), National Commodity Specialist Division (NCSD), issued New York Ruling Letter (NY) L89316, in which your LED pumpkin light was classified as a "portable electric lamp" under subheading 8513.10.4000 of the Harmonized Tariff Schedule United States Annotated (HTSUSA). We have since reviewed NY L89316, and find it to be in error.

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 was published on July 5, 2007, in the Customs Bulletin, Volume 41, No. 28. One comment in support of the proposed revocation was received in response to this notice.

**FACTS:**

The subject merchandise, the LED Pumpkin Light, is a battery-operated electric lamp which measures approximately 5 inches long. It is shaped in the form of a plastic candle with a clear-translucent flame-like top, which incorporates color-changing LED light bulbs.

**ISSUE:**

What is the proper classification under the Harmonized Tariff Schedule of the United States (HTSUS) for the electric candle light lamp?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tar-

iff 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 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

- 8513            Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
- 8513.10            Lamps:
- 8513.10.46            Other
- \*            \*            \*
- 9405            Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.40            Other electric lamps and lighting fittings:
- 9405.40.80            Other
- \*            \*            \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. The relevant ENs are as follows:

The EN to heading 8513, HTSUS (EN 8513), provides, in pertinent part:

The term “portable lamps” refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object. They usually have a handle or a fastening device and may be recognized by their particular shapes and their light weight. . . .

(Emphasis in original)

\*            \*            \*

The EN to heading 9405, HTSUS (EN 9405), provides, in pertinent part:

**(1) Lamps and Light Fittings Not Elsewhere Specified or Included**

(5) **Portable lamp (other than those of heading 85.13)**, e.g., hurricane lamps; stable lamps; hand lanterns; miners’ lamps; quarrymen’s lamps.

(Emphasis in original)

\*            \*            \*

It is undisputed that the subject article is a lamp within the meaning of both headings 8513 and 9405, HTSUS. In NY L89316, CBP determined that

the lamp was “portable” as required by heading 8513, HTSUS, and therefore classifiable under subheading 8513.10.4000, HTSUSA. We now find that determination to be in error.

Lamps such as the subject article are classifiable in heading 8513, HTSUS, provided that they are “portable” within the meaning of the terms of the heading. EN 8513, defines “portable” as referring only to those lamps which are “designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object.” Classification of the subject merchandise, therefore requires a threshold analysis of heading 8513, HTSUS. If designed for use when carried in the hand, i.e. portable, it will be classified under heading 8513, HTSUS. If not, the electric candle lamp is excluded from heading 8513, HTSUS, and classifiable instead under the basket provision for lamps, heading 9405, HTSUS.

“Whether an article is ‘specially designed’ or ‘specially constructed’ for a particular purpose may be determined by an examination of the article itself, its capabilities, as well as its actual use or uses. One must look at both the structural and auxiliary design features, as neither by itself is determinative.” Western States Import v. United States, 20 C.I.T. 736 (1996). In the present matter, we must determine whether the LED pumpkin light has any particular design features that adapt it for the stated purpose of being either carried in the hand or on the person, or being attached to a portable article or object. See Headquarters Ruling Letter (HQ) 965714, November 15, 2002. These design features include, but are not limited to, handles, fastening devices, ergonomic shapes capable of fitting easily into the hand, and use of light weight materials.

Although the subject lamp is lightweight, it does not possess any other design feature to indicate that it is designed for use when carried in the hand or on the person, or is designed to be attached to a portable article or object. The article’s shape is such that it is not easily carried in the hand nor does it have a handle or fastening device. Instead, the article’s design indicates that it is intended for placement on a flat surface such as a table, for an illuminated candlelight effect. As a result, it is excluded from heading 8513, HTSUS and classifiable instead under heading 9405, HTSUS.

One comment was received in response to the publication of the proposed revocation. The comment “fully supports” CBP’s decision to reclassify the subject merchandise under subheading 9405.40.8000, HTSUSA. Specifically, the commenter “agrees that consideration of design features . . . that adapt [a lamp] for a stated purpose and for what use(s) the article is marketed and sold should be significant factors for rendering future decisions vis-à-vis HTS 8513 v. 9504.”

**HOLDING:**

By application of GRI 1, the LED pumpkin light is classifiable under heading 9405, HTSUS. Specifically, it is classifiable under subheading 9405.40.8000, HTSUSA, which provides for: “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other.” The column one, general rate of duty is 3.9 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY L89316, dated January 11, 2006, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

  
**GENERAL NOTICE****19 CFR PART 177****MODIFICATION OF RULING LETTER RELATING TO THE  
APPLICATION OF THE COASTWISE LAWS TO VESSELS  
THAT ARE CONNECTED TO MOORED FACILITIES OVER  
THE OUTER CONTINENTAL SHELF**

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

**ACTION:** Notice of modification of a headquarters ruling letter relating to the application of the coastwise laws to vessels that are connected to moored facilities over the Outer Continental Shelf.

**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”) is modifying one ruling letter relating to the application of the coastwise laws to vessels that are connected to moored facilities by gangway or gangplank over the Outer Continental Shelf (OCS). Notice proposing this action and inviting comments on their correctness was published in the *Customs Bulletin*, Volume 41, Number 34, August 15, 2007. Two comments were received in response to this notice.

**EFFECTIVE DATE:** This modification is effective (Insert date sixty days from publication date in the Customs Bulletin)

**FOR FURTHER INFORMATION CONTACT:** L. LaToya Burley, Cargo Security, Carriers, and Immigration Branch, at (202) 572-8793.

**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, notice proposing the modification of Headquarters Ruling Letter (“HQ”) 114670, dated March 1, 1999 was published in the *Customs Bulletin*, Volume 41, Number 34, August 15, 2007. Two comments were received in response the notice. As stated in the proposed notice, this modification covers any rulings raising this issue which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) subject to this notice should have advised CBP during this notice period.

As mentioned above, two comments were received in response to the proposed notice. The comments received oppose modification of HQ 114607 and argue that a dynamically-positioned vessel connected by gangplank to a floating production facility should be considered a coastwise point. These comments, however, are devoid of any legal analysis in support of this position. Instead, both commenters predominantly contend that any such modification would create an unnecessary administrative burden on CBP officials responsible for enforcing the vessel arrival, entry, and clearance requirements administered by CBP. With respect to the compliance with the foregoing requirements, in view of the uniqueness of OCS operations, we recognize the discretion accorded the port director under whose jurisdiction such requirements fall. See 19 C.F.R. §§ 4.2(a), 4.3(b)(2), and 101.4(a). Modifying HQ 114607 would not have any impact on the port director’s discretion to manage the ad-

ministration of the arrival, entry, and clearance of vessels servicing the platform or a dynamically-positioned vessel connected to a platform by gangway.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 114607 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to correctly reflect CBP's position regarding the placement of gangways between dynamically positioned vessels and moored production facilities pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H010211, which is set forth as an attachment to this document.

In accordance with 19 U.S.C. 1625(c), this action will become effective 60 days after its publication in the *Customs Bulletin*.

DATED: October 15, 2007

JEREMY BASKIN,  
*Acting Director,*  
*Border Security and Trade Facilitation Division.*

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H010211  
October 15, 2007  
VES-3-15 OT:RR:BSTC:CCI H010211 LLB  
Category: Carriers

FRED BALDWIN, ESQUIRE  
*1321 State Street*  
*New Orleans, Louisiana 70118*

RE: Coastwise transportation; Outer Continental Shelf; gangway; modification of HQ 114607 (Mar. 1, 1999)

DEAR MR. BALDWIN:

On March 1, 1999, U.S. Customs and Border Protection ("CBP") issued Headquarters Ruling ("HQ") 114607 to you, on behalf of Saipem, Inc. In HQ 114607, CBP held, in part, that the placement of a gangway between a dynamically positioned vessel and a facility moored to the Outer Continental Shelf (OCS) would render such vessel an extension of the moored facility and thereby a coastwise point. We have recently recognized that the foregoing holding in HQ 114607 is contrary to CBP decisions which interpret the Outer Continental Shelf Lands Act (OCSLA). Consequently, this ruling, HQ H010211, modifies HQ 114607, in part, and provides a decision consistent with current CBP decisions. Because the remainder of HQ 114607 is correct, we do not address it here.

#### FACTS

The pertinent facts in HQ 114607 provide as follows. Saipem informed this office that it planned to use two foreign-flag cargo barges (the "barges") to transport J-lay pipelay equipment ("J-lay equipment" or "equipment") to and from a foreign-flag heavy lift/pipelaying semisubmersible ("S-7000" or "pipelaying vessel"). The S-7000 is a multipurpose vessel used for heavy lift

and pipelaying. The equipment was to be placed upon the barges in Rotterdam and towed directly to a location on the Gulf Coast of the U.S., where the equipment will be stored on board the barges. When the equipment was needed on board the S-7000, the barges were to be towed offshore to rendezvous with the S-7000. The pipelaying equipment was to be transferred from the barges to the S-7000 using the cranes onboard the S-7000. The rendezvous site was to be located beyond three miles from the U.S. shoreline, but within the waters of the U.S. that come within the provisions of the OCSLA. The S-7000 was to be held in place using dynamic positioning during the transfer and the two barges were to be moored directly to the S-7000 during the transfer activity. Neither the S-7000 nor the barges were to be attached to the seabed.

While the pipelaying activity is occurring, the barges were to be towed to a location on the U.S. Gulf Coast and stored until the equipment was ready to be offloaded from the S-7000. Upon completion of the pipelaying activity, the barges were to be towed to a site beyond three miles from the U.S. shoreline, but within the waters so as to come within the provisions of the OCSLA. Saipem proposed possibly using non-coastwise-qualified vessels to tow the barges and in such case the equipment was to be transferred from the S-7000 to the barges. The S-7000 was to be held in place using its dynamic positioning system during the transfer and the two barges were to be moored directly to the S-7000. Neither the S-7000 nor the barges were to be attached to the seabed while the equipment was being transferred to the barges. In fact, Saipem stated that the S-7000 was not being attached to the seabed at any time during the described events, including prior to and subsequent to the transfer of equipment to the S-7000.

Under the foregoing scenario, CBP held in HQ 114670, in part, that the S-7000 was not a coastwise point insofar as it was not attached to the seabed. However, when Saipem presented an alternative scenario which included connecting the SF-7000 by gangplank to a facility moored to the OCS, CBP held that the SF-7000 would be considered a coastwise point insofar as it would be an extension of the moored facility. As explained in the "Law and Analysis" section of this ruling, the latter holding is inapposite to the OCSLA and the CBP decisions interpreting that law.

#### ISSUE

Whether a dynamically positioned vessel, which is not attached to the OCS, is deemed an extension of a moored facility that is a coastwise point pursuant to the OCSLA, merely by virtue of connection to such moored facility by gangway.

#### LAW AND ANALYSIS

Pursuant to 46 U.S.C. § 55102(b), the merchandise coastwise law often called the "Jones Act", no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified, i.e. U.S.-built, owned and documented. Likewise, 46 U.S.C. § 55103(a) prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel.

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial

sea baseline, in cases where the baseline and the coastline differ. See 33 C.F.R. § 2.22(a)(2). In addition, Section 4(a) of the OCSLA,<sup>1</sup> provides, in part, that the laws of the United States are extended to:

. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

(emphasis added).

The subject of this revocation is whether the S-7000 is a coastwise point when using dynamic positioning and then connected by gangway to a moored facility. As stated above, the OCSLA, extends the laws of the U.S. to “all artificial islands and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom.” The statute was substantively amended by the Act of September 18, 1978,<sup>2</sup> adding, *inter alia*, language concerning temporary attachment to the seabed. The legislative history provides, in pertinent part:

. . . It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are *connected* to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes.

(emphasis added). H. Rep. No. 95-590; 1978 U.S.C.C.A.N. 1450, 1534.

Pursuant to the foregoing provision, we have ruled that the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. See Treasury Decisions (T.D.s) 54281(1), 71-179(1), 78-225; see also, Cust. Serv. Dec. 85-54. We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. See Cust. Serv. Dec. 81-214 and 83-52; see also, HQ 107579 (May 9, 1985).

In HQ 114607, Saipem indicates that S-7000 would be dynamically positioned next to a moored production facility and connected thereto by gangway. We note that with respect to dynamically positioned vessels, this agency has long-held that the lack of any permanent or temporary attachment to the seabed operates to exclude such vessels operating over the OCS from becoming coastwise points pursuant to the OCSLA. HQ 109576 (July 12, 1988) and HQ 113838 (Feb. 25, 1997). Consequently, unless the S-7000 itself is connected to the seabed, as required by the OCSLA, it will not be

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<sup>1</sup>67 Stat. 462; 43 U.S.C. § 1333(a).

<sup>2</sup>Pub. L. 95-372, Title II, § 203, 92 Stat. 635.

considered a coastwise point merely by virtue of its connection to a moored production facility by gangway. See HQ H008396 (June 4, 2007)(holding that a foreign-flag floatel was not a coastwise point by virtue of its connection to a moored floating production facility by gangplank unless it also attaches to the seabed.); HQ 115431 (Sept. 4, 2001)(stating that hotel vessel would not be considered a coastwise point pursuant to the OCSLA unless anchored or moored to the seabed); see also HQ 115134 (Sept. 27, 2000)(stating that a floating offshore service facility vessel would not be subject to Customs and navigation laws pursuant to the OCSLA insofar as an “onboard vessel propulsion system,” rather than anchoring, was used to maintain the vessel’s position next to drilling unit).

**HOLDING**

A dynamically positioned vessel, which is not attached to the OCS, is not deemed an extension of a moored facility that is a coastwise point pursuant to the OCSLA, merely by virtue of connection to such moored facility by gangway.

**EFFECT ON OTHER RULINGS**

HQ 114607, dated March 1, 1999, is hereby modified.

JEREMY BASKIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*