

# U.S. Customs and Border Protection

## *CBP Decisions*

(CBP Dec. 08–19)

### BONDS

#### APPROVAL TO USE AUTHORIZED FACSIMILE SIGNATURES AND SEALS

The use of facsimile signatures and seals on U.S. Customs and Border Protection bonds by the following corporate surety has been approved effective this date.

The Guarantee Company of North America USA

Authorized facsimile signatures on file for:

Jennifer E. Rome, Attorney-in-fact  
Maya Mackey, Attorney-in-fact  
Paul D. Amstutz, Attorney-in-fact  
Janet M. Ciesko, Attorney-in-fact

The corporate surety has provided U. S. Customs and Border Protection with a copy of the signatures to be used, a copy of the corporate seal, and a copy of the corporate resolution agreeing to be bound by the facsimile signatures and seal. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Date: June 4, 2008

WILLIAM G. ROSOFF,  
*Chief,*  
*Entry Process and Duty Refunds Branch.*

[Published in the Federal Register, June 10, 2008 (73 FR 32728)]

**19 CFR Part 10****CBP Dec. 08 – 21****RIN 1505–AB90****ARTICLES ASSEMBLED ABROAD: OPERATIONS  
INCIDENTAL TO THE ASSEMBLY PROCESS**

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs and Border Protection (“CBP”) Regulations in title 19 of the Code of Federal Regulations (19 CFR) in order to remove a provision that draws a distinction between preservative and decorative painting for purposes of the partial duty exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (“HTSUS”). The change is made to conform the CBP Regulations with the holding of a court decision in which the regulatory distinction between preservative and decorative painting was found to be invalid.

**DATES:** Final rule effective July 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Gerry O’Brien, Regulations and Rulings, Office of International Trade, (202) 572–8792.

**SUPPLEMENTARY INFORMATION:****Background**

Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (“HTSUS”), 19 U.S.C. 1202, provides a partial duty exemption for articles assembled abroad in whole or in part of fabricated components, the products of the United States, which: (a) were exported in condition ready for assembly without further fabrication; (b) have not lost their physical identity in such articles by change in form, shape, or otherwise; and, (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process, such as cleaning, lubricating, and painting. The regulations implementing subheading 9802.00.80, HTSUS, are found within §§ 10.11 through 10.26 of title 19 of the Code of Federal Regulations (19 CFR §§ 10.11 – 10.26).

Section 10.13 of title 19 of the CFR (19 CFR 10.13) provides that articles that satisfy the requirements of subheading 9802.00.80, HTSUS, are subject to a duty upon the full value of the imported article, less the cost or, if no charge is made, the value of such products

in the United States. The rate of duty that is assessed on an imported article eligible for the partial duty exemption under subheading 9802.00.80, HTSUS, is that which is applicable to the imported article as a whole under the appropriate HTSUS provision for such article.

Section 10.16 of title 19 of the CFR (19 CFR 10.16) concerns the assembly operations for purposes of subheading 9802.00.80, HTSUS. Section 10.16(b) sets forth general information regarding operations considered incidental to the assembly process. Under § 10.16(b), operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and will not preclude the application of the exemption. Examples of operations considered incidental to the assembly process are provided under §§ 10.16(b)(1) – (7). The application of preservative paint or coating, including preservative metallic coating, lubricants, or protective encapsulation is currently considered an operation incidental to the assembly process under § 10.16(b)(3).

Section 10.16(c) sets forth general information regarding operations that are not considered incidental to the assembly process. Under § 10.16(c), any significant process, operation, or treatment other than assembly whose primary purpose is the fabrication, completion, physical or chemical improvement of a component, or which is not related to the assembly process, whether or not it effects a substantial transformation of the article, will not be regarded as incidental to the assembly process and will preclude the application of the duty exemption to the article. Examples of operations that are not considered incidental to the assembly process are set forth under §§ 10.16(c)(1) – (5). Pursuant to § 10.16(c)(3), painting primarily intended to enhance the appearance of an article or to impart distinctive features or characteristics is not currently considered an operation incidental to the assembly process.

As indicated, § 10.16 currently draws a distinction between preservative and decorative painting for purposes of the partial duty exemption under subheading 9802.00.80, HTSUS: painting operations performed abroad that are deemed to be “preservative” in nature are considered incidental to the assembly process under § 10.16(b)(3) and will not preclude application of the partial duty exemption under subheading 9802.00.80, HTSUS; and, painting operations performed abroad that are deemed to be “decorative” in nature are not considered incidental to the assembly process under § 10.16(c)(3) and will preclude application of the partial duty exemption under subheading 9802.00.80, HTSUS.

### **Explanation of Amendments**

In DaimlerChrysler Corporation v. United States, 361 F.3d 1378 (Fed. Cir. 2004), the United States Court of Appeals for the Federal Circuit considered the issue of whether § 10.16 was valid to the ex-

tent that the regulation draws this distinction between preservative and decorative painting for purposes of the partial duty exemption under subheading 9802.00.80, HTSUS. In that case, Daimler Chrysler Corporation assembled trucks in Mexico with sheet metal components from the United States. The sheet metal components were initially treated with primer coats designed to prevent corrosion. After heat treatment, color coats and clear coats, referred to as “top coats”, were applied to the sheet metal components.

Customs and Border Protection (“CBP”) considered the primer coats to be preservative in nature and, consequently, determined that the application of the primer coats was an operation incidental to the assembly process under § 10.16(b)(3). However, CBP considered the top coats to be decorative in nature because they were intended primarily to enhance the appearance of the trucks. Because CBP did not consider application of the top coats to be an operation incidental to the assembly process pursuant to § 10.16(c)(3), these operations were not eligible for a partial duty exemption under subheading 9802.00.80, HTSUS.

Upon considering this particular issue on appeal, the U.S. Court of Appeals for the Federal Circuit held that subheading 9802.00.80, HTSUS, unambiguously provides that painting is an operation incidental to the assembly process. Therefore, the court determined that the distinction between preservative and decorative painting set forth in § 10.16 is invalid.

In order to implement the court’s interpretation of subheading 9802.00.80, HTSUS, CBP is amending § 10.16 so as to eliminate the distinction in the regulation between preservative and decorative painting. Section 10.16(b)(3) is amended to provide that applying paint or preservative coating, including preservative metallic coating, lubricants, or protective encapsulation, constitutes an operation incidental to the assembly process for purposes of subheading 9802.00.80, HTSUS. In addition, this document removes from the regulations § 10.16(c)(3), which currently provides that painting primarily intended to enhance the appearance of an article, or to impart distinctive features or characteristics, is not considered an operation incidental to the assembly process. Sections 10.16(c)(4) and (c)(5) are redesignated as §§ 10.16(c)(3) and (c)(4), respectively.

The amendments conform the regulations to reflect the decision issued by the United States Court of Appeals for the Federal Circuit in Daimler Chrysler Corporation v. United States by removing from § 10.16 the distinction between preservative and decorative painting. Under the amendments, for example, the application of primer coats and top coats will both be considered incidental to the assembly process for purposes of the partial duty exemption under subheading 9802.00.20, HTSUS. Finally, this document amends §§ 10.16(b) and (c) by removing the word “shall” each place it appears and adding, in its place, the word “will”.

### **Inapplicability of Prior Public Notice**

This document deletes from the regulations a provision determined to be invalid by the United States Court of Appeals for the Federal Circuit and benefits the public by expanding the scope of painting operations that will be considered incidental to the assembly process and thus eligible for a partial duty exemption under subheading 9802.00.80, HTSUS. For these reasons, CBP has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest.

### **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### **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 in 19 CFR Part 10**

Assembly, Customs duties and inspection, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

### **AMENDMENTS TO THE CBP REGULATIONS**

For the reasons set forth above, part 10 of title 19 of the Code of Federal Regulations (19 CFR part 10) is amended as follows:

#### **PART 10 – ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.**

1. The general authority citation for part 10 continues to read as follows:

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

\* \* \* \* \*

2. In § 10.16:

a. In paragraph (b), the introductory paragraph and paragraph (b)(3) are revised;

b. In paragraph (c), the introductory text is amended by removing the word “shall” each place it appears in the first sentence and adding, in its place, the word “will”;

- c. Paragraph (c)(3) is removed; and
- d. Paragraphs (c)(4) and (c)(5) are redesignated as paragraphs (c)(3) and (c)(4), respectively.

The revisions read as follows:

**§ 10.16 Assembly abroad.**

\* \* \* \* \*

(b) Operations incidental to the assembly process. Operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and will not preclude the application of the exemption. The following are examples of operations which are incidental to the assembly process:

(1) \* \* \*

(3) Application of paint or preservative coating, including preservative metallic coating, lubricants, or protective encapsulation;

\* \* \* \* \*

JAYSON P. AHERN,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

Approved: June 6, 2008

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

[Published in the Federal Register, June 12, 2008 (73 FR 33299)]

**DEPARTMENT OF THE TREASURY**  
**19 CFR PARTS 10, 24, 162, 163, AND 178**  
**USCBP-2008-0060**  
**CBP Dec. 08-22**  
**RIN 1505-AB84**

**DOMINICAN REPUBLIC—CENTRAL AMERICA— UNITED STATES FREE TRADE AGREEMENT**

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

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

**SUMMARY:** This rule amends title 19 of the Code of Federal Regulations (“CFR”) on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the Domini-

can Republic—Central America—United States Free Trade Agreement.

**DATES:** Interim rule effective June 13, 2008; comments must be received by August 12, 2008.

**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-2008-0060.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (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 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, NW., 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: Heather Sykes, Office of International Trade, (202) 863-6099.

Legal Aspects: Karen Greene, Office of International Trade, (202) 572-8838.

**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 in developing these regulations 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 August 5, 2004, the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States signed the Dominican Republic—Central America—United States Free Trade Agreement (“CAFTA-DR” or “Agreement”). The stated objectives of the CAFTA-DR include: strengthening the special bonds of friendship and cooperation among the signatory countries and promoting regional economic integration; contributing to the harmonious development and expansion of world trade and providing a catalyst to broader international cooperation; creating an expanded and secure market for goods and services produced in the region; establishing clear and mutually advantageous rules governing trade among the signatory countries; ensuring a predictable commercial framework for business planning and investment; seeking to facilitate regional trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for importers and exporters; fostering creativity and innovation, and promoting trade in goods and services that are the subject of intellectual property rights; promoting transparency and eliminating bribery and corruption in international trade and investment; protecting, enhancing, and enforcing basic workers’ rights; creating new employment opportunities and improving working conditions and living standards in the region; and implementing the Agreement in a manner consistent with environmental protection and conservation, promoting sustainable development, and strengthening cooperation on environmental matters.

The provisions of the CAFTA-DR were adopted by the United States with the enactment on August 2, 2005, of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the “Act”), Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 et seq.). Section 210 of the Act requires that regulations be prescribed as necessary to implement these provisions of the CAFTA-DR.

On February 28, 2006, the President signed Proclamation 7987 to implement the provisions of the CAFTA-DR with respect to El Salvador. The Proclamation, which was published in the **Federal Register** on March 2, 2006 (71 FR 10827), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of Publication 3829 of the U.S. International Trade Commis-

sion. The modifications to the HTSUS included the addition of new General Note 29, incorporating the relevant CAFTA-DR 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 CAFTA-DR where the special program indicator “P” appears in parenthesis in the “Special” rate of duty subcolumn. Presidential Proclamation 7996 dated March 31, 2006, which was published in the **Federal Register** on April 4, 2006 (71 FR 16971), implemented the CAFTA-DR with respect to Honduras and Nicaragua. Presidential Proclamation 8034 dated June 30, 2006, published in the **Federal Register** on July 6, 2006 (71 FR 38509), implemented the CAFTA-DR with respect to Guatemala. Presidential Proclamation 8111 dated February 28, 2007, published in the **Federal Register** on March 6, 2007 (72 FR 10025), implemented the CAFTA-DR with respect to the Dominican Republic.

Customs and Border Protection (“CBP”) is responsible for administering the provisions of the CAFTA-DR and the Act that relate to the importation of goods into the United States from a CAFTA-DR Party for which the Agreement has entered into force. Those customs-related CAFTA-DR provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Two (General Definitions), Chapter Three (National Treatment and Market Access for Goods), and Chapter Four (Rules of Origin and Origin Procedures).

Certain general definitions set forth in Chapter Two of the CAFTA-DR have been incorporated into the CAFTA-DR implementing regulations. The tariff-related provisions within CAFTA-DR Chapter Three that are the subject of regulatory action in this interim rule are Article 3.6 (Goods Re-entered after Repair or Alteration) and those relating specifically to textile and apparel goods are Article 3.24 (Customs Cooperation), Article 3.25 (Rules of Origin and Related Matters), Article 3.28 and Annex 3.28 (Preferential Tariff Treatment for Non-Originating Apparel Goods of Nicaragua), and Article 3.29 (Definitions).

Section A of Chapter Four of the CAFTA-DR sets forth the rules for determining whether an imported good qualifies as an originating good of a Party and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment under the CAFTA-DR as provided for in the HTSUS. The basic rules of origin in Section A of Chapter Four are set forth in General Note 29, HTSUS. Under Article 4.1 of Chapter Four, originating goods may be grouped in three broad categories: (1) goods that are wholly obtained or produced entirely in the territory of one or more of the Parties; (2) goods that are produced entirely in the territory of one or more of the Parties and that satisfy the specific rules of origin in CAFTA-DR Annex 4.1 (change in tariff classification requirement and/or regional value content requirement) and all other applicable requirements of Chap-

ter Four; and (3) goods that are produced entirely in the territory of one or more of the Parties exclusively from materials that originate in those countries. Article 4.2 sets forth the methods for calculating the regional value content of a good. Articles 4.3 and 4.4 set forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the de minimis rule. Article 4.5 allows production that takes place in the territory of one or more of the Parties to be accumulated such that, provided other requirements are met, the resulting good is considered originating. Article 4.6 provides a de minimis criterion. The remaining Articles within Section A of Chapter Four consist of additional subrules, applicable to the originating good concept, involving fungible goods and materials, accessories, spare parts, and tools, packaging materials, packing materials, indirect materials, transit and transshipment, sets, and consultation and modifications. All Articles within Section A are reflected in the CAFTA-DR implementing regulations, except for Article 4.14 (Consultation and Modifications).

Section B of Chapter Four sets forth procedures that apply under the CAFTA-DR in regard to claims for preferential tariff treatment. Specifically, Section B includes provisions concerning obligations related to importations and exportations, claims for preferential tariff treatment, record keeping requirements, verification of preference claims, common guidelines, and definitions of terms used within the context of the rules of origin. All Articles within Section B, except for Article 4.21 (Common Guidelines), are reflected in these implementing regulations.

In order to provide transparency and facilitate their use, the majority of the CAFTA-DR implementing regulations set forth in this document have been included within Subpart J in Part 10 of the CBP regulations (19 CFR Part 10). However, implementation of the tariff preference and related provisions of CAFTA-DR has also been effected through amendments to a number of other regulatory provisions outside of Subpart J, Part 10 within the CBP 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 a CAFTA-DR Party for which, like goods originating in Canada, Mexico, Singapore, Chile, Morocco, and Bahrain, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of CAFTA-DR Article 3.5 (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 J**

### **General Provisions**

Section 10.581 outlines the scope of Subpart J, Part 10 of the CBP regulations. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart J, 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 J, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.582 sets forth definitions of common terms used in multiple contexts or places within Subpart J, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 2.1, Annex 2.1, and Article 3.29 of the CAFTA-DR, and § 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions that apply in a more limited Subpart J, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

### **Import Requirements**

Section 10.583 sets forth the procedure for claiming CAFTA-DR preferential tariff treatment at the time of entry and, as provided in CAFTA-DR Article 4.16.1, states that an importer may make a claim for CAFTA-DR preferential tariff treatment based on a certification by the importer, exporter, or producer or the importer's knowledge that the good qualifies as an originating good. Section 10.583 also provides, consistent with CAFTA-DR Article 4.15.4(d), that when an importer has reason to believe that a claim is based on inaccurate information, the importer must correct the claim and pay any duties that may be due.

Section 10.584, which is based on CAFTA-DR Articles 4.15.4 and 4.16, requires a U.S. importer, upon request, to submit a copy of the certification of the importer, exporter, or producer if the certification forms the basis for the claim. Section 10.584 specifies the information that must be included on the certification, sets forth the circumstances under which the certification may be prepared by the exporter or producer of the good, and provides that the certification may be used either for a single importation or for multiple importations of identical goods.

Section 10.585 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment. Section 10.586, which is

based on CAFTA-DR Article 4.17, provides that the certification is not required for certain non-commercial or low-value importations.

Section 10.587 implements CAFTA-DR Article 4.19 concerning the maintenance of relevant records regarding the imported good.

Section 10.588, which reflects CAFTA-DR Article 4.15.2, authorizes the denial of CAFTA-DR tariff benefits if the importer fails to comply with any of the requirements under Subpart J, Part 10, CBP regulations.

### **Export Requirements**

Section 10.589, which implements CAFTA-DR Articles 4.18 and 4.19.1, sets forth certain obligations of a person who completes and issues a certification for a good exported from the United States to a Party. Paragraphs (a) and (b) of § 10.589, reflecting CAFTA-DR Article 4.18.1, require a person who completes such a certification to provide a copy of the certification to CBP upon request and to give prompt notification of any errors in the certification to every person to whom the certification was given. Paragraph (c) of § 10.589 reflects Article 4.19.1, concerning the record keeping requirements that apply to a person who completes and issues a certification for a good exported from the United States to a Party.

### **Post-importation Duty Refund Claims**

Sections 10.590 through 10.592 implement CAFTA-DR Article 4.15.5, which allows an importer who did not claim CAFTA-DR tariff benefits on a qualifying good at the time of importation to apply for a refund of any excess duties at any time within one year after the date of importation. Such a claim may be made even if liquidation of the entry would otherwise be considered final under other provisions of law.

### **Rules of Origin**

Sections 10.593 through 10.605 provide the implementing regulations regarding the rules of origin provisions of General Note 29, HTSUS, Chapter Four and Article 3.25 of the CAFTA-DR, and section 203 of the Act.

#### **Definitions**

Section 10.593 sets forth terms that are defined for purposes of the rules of origin.

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

Section 10.594 sets forth the basic rules of origin established in Article 4.1 of the CAFTA-DR, section 203(b) of the Act, and General Note 29(b), HTSUS. The provisions of § 10.594 apply both to the determination of the status of an imported good as an originating good

for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under General Note 29, HTSUS. Section 10.594(a) specifies those goods that are originating goods because they are wholly obtained or produced entirely in the territory of one or more of the Parties.

Section 10.594(b) provides that goods that have been produced entirely in the territory of one or more of the Parties so that each non-originating material undergoes an applicable change in tariff classification and satisfies any applicable regional value content or other requirement set forth in General Note 29, HTSUS, are originating goods. Essential to the rules in § 10.594(b) are the specific rules of General Note 29(n), HTSUS, which are incorporated by reference.

Section 10.594(c) provides that goods that have been produced entirely in the territory of one or more of the Parties exclusively from originating materials are originating goods.

#### Value Content

Section 10.595 reflects CAFTA-DR Article 4.2 concerning the basic rules that apply for purposes of determining whether an imported good satisfies a minimum regional value content (“RVC”) requirement. Section 10.596, reflecting CAFTA-DR Articles 4.3 and 4.4, sets forth the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the de minimis rules.

#### Accumulation

Section 10.597, which is derived from CAFTA-DR Article 4.5, sets forth the rule by which originating materials from the territory of one or more of the Parties that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other country. In addition, this section also establishes that a good that is produced by one or more producers in the territory of one or more of the Parties is an originating good if the good satisfies all of the applicable requirements of the rules of origin of the CAFTA-DR.

#### De Minimis

Section 10.598, as provided for in CAFTA-DR Article 4.6, sets forth de minimis rules for goods that may be considered to qualify as originating goods even though they fail to qualify as originating goods under the rules specified in § 10.594. There are a number of exceptions to the de minimis rule as well as a separate rule for textile and apparel goods.

#### Fungible goods and materials

Section 10.599, as provided for in CAFTA-DR Article 4.7, sets forth

the rules by which “fungible” goods or materials may be claimed as originating.

#### Accessories, spare parts, or tools

Section 10.600, as set forth in CAFTA-DR Article 4.8, specifies the conditions under which a good’s standard accessories, spare parts, or tools are: (1) treated as originating goods; and (2) disregarded in determining whether all non-originating materials undergo an applicable change in tariff classification under General Note 29(n), HTSUS.

#### Packaging materials and packing materials

Sections 10.601 and 10.602, which are derived from CAFTA-DR Articles 4.9 and 4.10, respectively, provide that retail packaging materials and packing materials for shipment are to be disregarded with respect to their actual origin in determining whether non-originating materials undergo an applicable change in tariff classification under General Note 29(n), HTSUS. These sections also set forth the treatment of packaging and packing materials for purposes of the regional value content requirement of the note.

#### Indirect materials

Section 10.603, as set forth in CAFTA-DR Article 4.11, provides that indirect materials, as defined in § 10.582(m), are considered to be originating materials without regard to where they are produced.

#### Transit and transshipment

Section 10.604, which is derived from CAFTA-DR Article 4.12, sets forth the rule that an originating good loses its originating status and is treated as a non-originating good if, subsequent to production in the territory of one or more of the Parties that qualifies the good as originating, the good: (1) undergoes production outside the territories of the Parties, other than certain specified minor operations; or (2) does not remain under the control of customs authorities in the territory of a non-Party.

#### Goods Classifiable as Goods Put Up in Sets

Section 10.605, which is based on CAFTA-DR Articles 3.25.9 (Rules of Origin and Related Matters) and 4.13 (Sets of Goods), provides that, notwithstanding the specific rules of General Note 29(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not qualify as originating goods unless: (1) each of the goods in the set is an originating good; or (2) the total value of the non-originating goods in the set does not exceed 10 percent of the adjusted value of the set in the case of textile or apparel goods, or 15 percent of the ad-

justed value of the set in the case of goods other than textile or apparel goods.

### **Tariff Preference Level**

Section 10.606 sets forth procedures for claiming CAFTA-DR tariff benefits for certain non-originating cotton or man-made fiber apparel goods of Nicaragua that are entitled to preference under an applicable tariff preference level (“TPL”).

Section 10.607, which is based on CAFTA-DR Article 3.28 and Annex 3.28, describes the non-originating cotton or man-made fiber apparel goods of Nicaragua that are eligible for TPL claims under the CAFTA-DR.

Section 10.608, as authorized by § 1634(c)(1) of the Pension Protection Act of 2006 (Pub. L. 109–280, 120 Stat. 1163), requires an importer claiming preferential tariff treatment on a non-originating cotton or man-made fiber apparel good of Nicaragua specified in § 10.607 to submit a certificate of eligibility issued by the Government of Nicaragua.

Consistent with § 10.604, § 10.609 provides that a good of Nicaragua that is otherwise eligible for preferential tariff treatment under an applicable TPL will not be considered eligible for preference if it: (1) undergoes production outside the territories of the Parties, other than certain specified minor operations; or (2) does not remain under the control of customs authorities in the territory of a non-Party.

Section 10.610 provides for the denial of a TPL claim if the importer fails to comply with any applicable requirement under Subpart J, Part 10, CBP regulations, including the failure to provide documentation, when requested by CBP, establishing that the good met the conditions relating to transshipment set forth in § 10.609(a).

### **Origin Verifications and Determinations**

Section 10.616 implements CAFTA-DR Article 4.20 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to CAFTA-DR preferential tariff treatment. This section also governs the conduct of verifications directed to producers of materials that are used in the production of a good for which CAFTA-DR preferential duty treatment is claimed.

Section 10.617, which reflects CAFTA-DR Article 3.24, sets forth the verification and enforcement procedures specifically relating to trade in textile and apparel goods.

Section 10.618 provides the procedures that apply when preferential tariff treatment is denied on the basis of an origin verification conducted under this subpart.

Section 10.619 implements CAFTA-DR Article 4.20.5 and § 206(b) of the Act, concerning the denial of preferential tariff treatment in

situations in which there is a pattern of conduct by an importer, exporter, or producer of false or unsupported CAFTA-DR preference claims.

### **Penalties**

Section 10.620 concerns the general application of penalties to CAFTA-DR transactions and is based on CAFTA-DR Article 5.9.

Section 10.621 reflects CAFTA-DR Article 4.15.3 and § 206(a)(1) of the Act with regard to an exception to the application of penalties in the case of an importer who promptly and voluntarily makes a corrected claim and pays any duties owing.

Section 10.622 implements CAFTA-DR Article 4.18.2 and § 206(a)(2) of the Act, concerning an exception to the application of penalties in the case of a U.S. exporter or producer who promptly and voluntarily provides notification of the making of an incorrect certification with respect to a good exported to a Party.

Section 10.623 sets forth the circumstances under which the making of a corrected claim or certification by an importer or the providing of notification of an incorrect certification by a U.S. exporter or producer will be considered to have been done “promptly and voluntarily”. Corrected claims or certifications that fail to meet these requirements are not excepted from penalties, although the U.S. importer, exporter, or producer making the corrected claim or certification may, depending on the circumstances, qualify for a reduced penalty as a prior disclosure under 19 U.S.C. 1592(c)(4). Section 10.623 also specifies the content of the statement that must accompany each corrected claim or certification.

### **Goods Returned after Repair or Alteration**

Section 10.624 implements CAFTA-DR Article 3.6 regarding duty-free treatment for goods re-entered after repair or alteration in a CAFTA-DR Party.

### **Retroactive Preferential Tariff Treatment for Textile and Apparel Goods**

Current § 10.699 of the CBP regulations, which sets forth the conditions and requirements that apply for purposes of submitting requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive tariff treatment under the CAFTA-DR (see CAFTA-DR Article 3.20 and § 205 of the Act), is redesignated as § 10.625 so as to conform numerically to the new provisions added to Subpart J, Part 10, by this interim rule. In addition, paragraph (a) of redesignated § 10.625, relating to the applicability of this section, is revised by deleting certain redundant language set forth in new § 10.581 (Scope) of Subpart J, Part 10.

**Part 24**

An amendment is made to § 24.23(c), which concerns the merchandise processing fee, to implement § 204 of the Act, providing that the merchandise processing fee is not applicable to goods that qualify as originating goods under the CAFTA-DR.

**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 CAFTA-DR records maintenance and examination provisions contained in Subpart J, 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 CAFTA-DR as an activity for which records must be maintained. Also, the list of 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 documentation in the importer's possession supporting an CAFTA-DR 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 preferential tariff treatment under the CAFTA-DR and the Act.

**Inapplicability of Notice and Delayed Effective Date Requirements**

Under the Administrative Procedure Act (“APA”) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the 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 to the extent that it involves a foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States because they implement preferential tariff treatment and related provisions of the

CAFTA-DR. 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 received 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, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, 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 APA, as described above. 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 1651-0125.

The collections of information in these regulations are in §§ 10.583 and 10.584. This information is required in connection with claims for preferential tariff treatment under the CAFTA-DR and the Act and will be used by CBP to determine eligibility for tariff preference under the CAFTA-DR and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 4,000 hours.

Estimated average annual burden per respondent: .2 hours.

Estimated number of respondents: 20,000.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and

Border Protection, 1300 Pennsylvania Avenue, NW. (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

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

#### 19 CFR Part 162

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

#### 19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

#### 19 CFR Part 178

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

### **Amendments to the Regulations**

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

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

1. The general authority citation for Part 10 continues to read, the specific authority for § 10.699 is removed, and the specific authority for §§ 10.581 through 10.625 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 10.581 through 10.625 also issued under 19 U.S.C. 1202 (General Note 29, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 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, Singapore, Chile, Morocco, Bahrain, El Salvador, Guatemala, Honduras, Nicaragua, or the Dominican Republic 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 Note 12, 25, 26, 27, or 29, HTSUS, in the country of which the importer is a resident.

\* \* \* \* \*

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

**Subpart J – Dominican Republic—Central America—United States Free Trade Agreement**

Sec.

**General Provisions**

- 10.581 Scope.
- 10.582 General definitions.

**Import Requirements**

- 10.583 Filing of claim for preferential tariff treatment upon importation.
- 10.584 Certification.
- 10.585 Importer obligations.
- 10.586 Certification not required.
- 10.587 Maintenance of records.

10.588 Effect of noncompliance; failure to provide documentation regarding transshipment.

**Export Requirements**

10.589 Certification for goods exported to a Party.

**Post-Importation Duty Refund Claims**

10.590 Right to make post-importation claim and refund duties.

10.591 Filing procedures.

10.592 CBP processing procedures.

**Rules of Origin**

10.593 Definitions.

10.594 Originating goods.

10.595 Regional value content.

10.596 Value of materials.

10.597 Accumulation.

10.598 De minimis.

10.599 Fungible goods and materials.

10.600 Accessories, spare parts, or tools.

10.601 Retail packaging materials and containers.

10.602 Packing materials and containers for shipment.

10.603 Indirect materials.

10.604 Transit and transshipment.

10.605 Goods classifiable as goods put up in sets.

**Tariff Preference Level**

10.606 Filing of claim for tariff preference level.

10.607 Goods eligible for tariff preference level claims.

10.608 Submission of certificate of eligibility.

10.609 Transshipment of non-originating cotton or man-made fiber apparel goods.

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

**Origin Verifications and Determinations**

10.616 Verification and justification of claim for preferential tariff treatment.

- 10.617 Special rule for verifications in a Party of U.S. imports of textile and apparel goods.
- 10.618 Issuance of negative origin determinations.
- 10.619 Repeated false or unsupported preference claims.

#### **Penalties**

- 10.620 General.
- 10.621 Corrected claim or certification by importers.
- 10.622 Corrected certification by exporters or producers.
- 10.623 Framework for correcting claims or certifications.

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

- 10.624 Goods re-entered after repair or alteration in a Party.

#### **Retroactive Preferential Tariff Treatment for Textile and Apparel Goods**

- 10.625 Refunds of excess customs duties.

### **SUBPART J - DOMINICAN REPUBLIC—CENTRAL AMERICA—UNITED STATES FREE TRADE AGREEMENT**

#### **General Provisions**

##### **§ 10.581 Scope.**

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the Dominican Republic—Central America—United States Free Trade Agreement (the CAFTA-DR) signed on August 5, 2004, and under the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the Act; Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*)), as amended by section 1634 of the Pension Protection Act of 2006 (Pub. L. 109–280, 120 Stat. 1167). 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 CAFTA-DR and the Act are contained in Parts 24, 162, and 163 of this chapter.

##### **§ 10.582 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 for preferential tariff treatment. “Claim for preferential

tariff treatment” means a claim that a good is entitled to the duty rate applicable under the CAFTA-DR to an originating good or other good specified in the CAFTA-DR, and to an exemption from the merchandise processing fee;

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

(c) Customs authority. “Customs authority” means the competent governmental unit that is responsible under the law of a Party for the administration of customs laws and regulations;

(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, for purposes of implementing the CAFTA-DR, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of 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 that is applied pursuant to a Party’s Domestic law; or

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

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

(f) Days. “Days” means calendar days;

(g) 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;

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

(i) Harmonized System. “Harmonized System” 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;

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

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

(l) Identical goods. “Identical goods” means goods that are produced in the same country and are the same in all respects, includ-

ing physical characteristics, quality, and reputation, but excluding minor differences in appearance.

(m) Indirect material. “Indirect material” means a good used in the production, testing, or inspection of a good in the territory of one or more of the Parties but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of one or more of the Parties, including:

- (1) Fuel and energy;
- (2) Tools, dies, and molds;
- (3) Spare parts and materials used in the maintenance of equipment or buildings;
- (4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or 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 production of the good can reasonably be demonstrated to be a part of that production;

(n) Originating. “Originating” means qualifying for preferential tariff treatment under the rules of origin set out in CAFTA-DR Chapter Four (Rules of Origin and Origin Procedures) and General Note 29, HTSUS;

(o) Party. “Party” means:

- (1) The United States; and
- (2) Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, or Nicaragua, for such time as the CAFTA-DR is in force between the United States and that country;

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

(q) Preferential tariff treatment. “Preferential tariff treatment” means the duty rate applicable under the CAFTA-DR to an originating good or other good specified in the CAFTA-DR, and an exemption from the merchandise processing fee;

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

(s) Tariff preference level. “Tariff preference level” means a quantitative limit for certain non-originating apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the requirements set forth in §§ 10.606 through 10.610 of this subpart.

(t) 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, except for those goods listed in Annex 3.29 of the CAFTA-DR;

(u) Territory. “Territory” means:

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

(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;

(v) WTO. “WTO” means the World Trade Organization; and

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

### **Import Requirements**

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

(a) Basis of claim. An importer may make a claim for CAFTA-DR preferential tariff treatment, including an exemption from the merchandise processing fee, based on:

(1) A certification, as specified in § 10.584 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer’s knowledge that the good qualifies as an originating good, including reasonable reliance on information in the importer’s possession that the good is an originating good.

(b) Making a claim. The claim is made by including on the entry summary, or equivalent documentation, the letter “P” or “P+” as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) Corrected claim. If, after making the claim specified in paragraph (a) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (see §§ 10.621 and 10.623 of this subpart).

**§ 10.584 Certification.**

(a) **General.** An importer who makes a claim under § 10.583(b) of this subpart based on a certification of the importer, exporter, or producer that the good qualifies as originating must submit, at the request of the port director, a copy of the certification. The certification:

(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 be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) 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, the exporter of the good (if different from the producer), and the producer 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, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(iv) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 29(n), HTSUS; and

(v) The applicable rule of origin set forth in General Note 29, HTSUS, under which the good qualifies as an originating good; and

(4) 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 originated or are considered to have originated in the territory of one or more of the Parties, and comply with the origin requirements specified for those goods in the Dominican Republic—Central America—United States Free Trade Agreement; there has been no further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the goods in good condition or to transport the goods to the United States; the goods remained

under the control of customs authorities while in the territory of a non-Party; and

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

(b) Responsible official or agent. The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) Language. The certification provided for in paragraph (a) of this section must be completed in either the English language or the language of the exporting Party. In the latter case, the port director may require the importer to submit an English translation of the certification.

(d) Certification by the exporter or producer. A certification may be prepared by the exporter or producer of the good on the basis of:

(1) The exporter's or producer's knowledge that the good is originating; or

(2) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(e) Applicability of certification. The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

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

(f) Validity of certification. A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was signed.

#### **§ 10.585 Importer obligations.**

(a) General. An importer who makes a claim for preferential tariff treatment under § 10.583(b) of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the CAFTA-DR;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.584 of this subpart;

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) Information provided by exporter or producer. The fact that the importer has made a claim or submitted a certification 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.

(c) Exemption from penalties. An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (see §§ 10.621 and 10.623 of this subpart).

#### **§ 10.586 Certification not required.**

(a) General. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.584 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 is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.584 of this subpart, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

#### **§ 10.587 Maintenance of records.**

(a) General. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.583(b) of this subpart must maintain, for a minimum of five years after the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the CAFTA-DR. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

(b) 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.

#### **§ 10.588 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 certification prepared in accordance with § 10.584 of this subpart, when re-

quested, the port director may deny preferential tariff treatment to the imported good.

(b) Failure to provide documentation regarding transshipment. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the CAFTA-DR, 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 conditions set forth in § 10.604(a) of this subpart were met.

### **Export Requirements**

#### **§ 10.589 Certification for goods exported to a Party.**

(a) Submission of certification to CBP. Any person who completes and issues a certification for a good exported from the United States to a Party must provide a copy of the certification (or such other medium or format approved by the Party's customs authority for that purpose) to CBP upon request.

(b) Notification of errors in certification. Any person who completes and issues a certification for a good exported from the United States to a Party and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (see §§ 10.622 and 10.623 of this subpart).

(c) Maintenance of records — (1) General. Any person who completes and issues a certification for a good exported from the United States to a Party must maintain, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

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

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

(iii) The production of the good in the form in which the good was exported.

(2) Method of maintenance. The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) Availability of records. For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in Part 163 of this chapter.

### **Post-Importation Duty Refund Claims**

#### **§ 10.590 Right to make post-importation claim and refund duties.**

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.591 of this subpart. Subject to the provisions of § 10.588 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.592(c) of this subpart.

#### **§ 10.591 Filing procedures.**

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

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

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

(2) A copy of a certification prepared in accordance with § 10.584 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

**§ 10.592 CBP processing procedures.**

(a) Status determination. After receipt of a post-importation claim under § 10.591 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) Pending protest or judicial review. If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim filed under § 10.591 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under § 10.591 of this subpart until judicial review has been completed.

(c) Allowance of claim. (1) Unliquidated entry. If the port director determines that a claim for a refund filed under § 10.591 of this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) Liquidated entry. If the port director determines that a claim for a refund filed under § 10.591 of this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under § 10.591 of this subpart.

(d) Denial of claim. (1) General. The port director may deny a claim for a refund filed under § 10.591 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.591 of this subpart, or if, following initiation of an origin verification under § 10.616 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.616 of this subpart.

(2) Unliquidated entry. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) Liquidated entry. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without

reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

### Rules of Origin

#### § 10.593 Definitions.

For purposes of §§ 10.593 through 10.605:

(a) Adjusted value. “Adjusted value” means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (m) of this section;

(b) Class of motor vehicles. “Class of motor vehicles” means any one of the following categories of motor vehicles:

(1) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, HTSUS;

(2) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles provided for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, HTSUS, or motor vehicles provided for in subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles provided for in subheadings 8703.21 through 8703.90, HTSUS;

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

(d) Fungible good or material. “Fungible good or material” means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) 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 state-

ments. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

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

(g) Goods wholly obtained or produced entirely in the territory of one or more of the Parties. “Goods wholly obtained or produced entirely in the territory of one or more of the Parties” means:

(1) Plants and plant products harvested or gathered in the territory of one or more of the Parties;

(2) Live animals born and raised in the territory of one or more of the Parties;

(3) Goods obtained in the territory of one or more of the Parties from live animals;

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

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or more of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the Parties by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced on board factory ships from the goods referred to in paragraph (g)(6) of this section, if such factory ships are registered or recorded with a Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(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) Manufacturing or processing operations in the territory of one or more of the Parties; or

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

(11) Recovered goods derived in the territory of one or more of the Parties from used goods, and used in the territory of a Party in the production of remanufactured goods; and

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

(h) Material. “Material” means a good that is used in the production of another good, including a part or an ingredient;

(i) Model line. “Model line” means a group of motor vehicles having the same platform or model name;

(j) Net cost. “Net cost” means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(k) Non-allowable interest costs. “Non-allowable interest costs” means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rates for comparable maturities of the Party in which the producer is located;

(l) Non-originating good or non-originating material. “Non-originating good” or “non-originating material” means a good or material, as the case may be, that does not qualify as originating under General Note 29, HTSUS, or this subpart;

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

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

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

(p) Reasonably allocate. “Reasonably allocate” means to apportion in a manner that would be appropriate under generally accepted accounting principles;

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

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

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(r) Remanufactured good. “Remanufactured good” means a good that is classified in Chapter 84, 85, or 87, or heading 9026, 9031, or 9032, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

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

(2) Has a similar life expectancy and enjoys a factory warranty similar to a new good that is classified in one of the enumerated HTSUS chapters or headings;

(s) Royalties. “Royalties” means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or more of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(t) Sales promotion, marketing, and after-sales service costs. “Sales promotion, marketing, and after-sales service costs” means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(u) Self-produced material. “Self-produced material” means an originating material that is produced by a producer of a good and

used in the production of that good;

(v) Shipping and packing costs. “Shipping and packing costs” means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(w) Total cost. “Total cost” means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(x) Used. “Used” means used or consumed in the production of goods; and

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

#### § 10.594 Originating goods.

Except as otherwise provided in this subpart and General Note 29(m), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the CAFTA-DR only if:

(a) The good is wholly obtained or produced entirely in the territory of one or more of the Parties;

(b) The good is produced entirely in the territory of one or more of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 29(n), HTSUS, and the good satisfies all other applicable requirements of General Note 29, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 29(n), HTSUS, and satisfies all other applicable requirements of General Note 29, HTSUS; or

(c) The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

#### § 10.595 Regional value content.

(a) General. Except for goods to which paragraph (d) of this section applies, where General Note 29(n), HTSUS, sets forth a rule

that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) Build-down method. Under the build-down method, the regional value content must be calculated on the basis of the formula  $RVC = ((AV - VNM)/AV) \times 100$ , where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) Build-up method. Under the build-up method, the regional value content must be calculated on the basis of the formula  $RVC = (VOM/AV) \times 100$ , where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) Special rule for certain automotive goods.

(1) General. Where General Note 29(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or headings 8701 through 8708, HTSUS, the regional value content of such good may be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) Net cost method. Under the net cost method, the regional value content is calculated on the basis of the formula  $RVC = ((NC - VNM)/NC) \times 100$ , where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs

that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) Motor vehicles.

(i) General. For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or more Parties.

(ii) Categories. The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) Other automotive goods. (i) General. For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: the fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph

(d)(4)(i) or (d)(4)(ii) for automotive goods that are exported to the territory of one or more Parties.

(ii) Duration of use. A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

#### **§ 10.596 Value of materials.**

(a) Calculating the value of materials. Except as provided in § 10.603, for purposes of calculating the regional value content of a good under General Note 29(n), HTSUS, and for purposes of applying the de minimis (see § 10.598 of this subpart) provisions of General Note 29(n), HTSUS, the value of a material is:

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

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

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

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) Examples. The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in El Salvador purchases material x from an unrelated seller in El Salvador for \$100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in El Salvador (\$100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into El Salvador by the seller (or by anyone else). So long as the producer acquired material x in El Salvador, it is intended that the value of material x will be determined

on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within El Salvador at or about the same time the goods were sold to the producer in El Salvador. Thus, if the seller of material x also sold an identical material to another buyer in El Salvador without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) Permissible additions to, and deductions from, the value of materials.

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

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the Parties to the location of the producer;

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

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

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

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the Parties to the location of the producer;

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

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

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or more of the Parties.

(d) Accounting method. Any cost or value referenced in General Note 29, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

**§ 10.597 Accumulation.**

(a) Originating materials from the territory of one or more of the Parties that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or more of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.594 of this subpart and all other applicable requirements of General Note 29, HTSUS.

**§ 10.598 De minimis.**

(a) General. Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 29(n), HTSUS, is an originating good if:

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

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 29(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 29, HTSUS.

(b) Exceptions. Paragraph (a) does not apply to:

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

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight

of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; and

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS; and

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in heading 1006, HTSUS, that is used in the production of a good provided for in heading 1102 or 1103, HTSUS, or subheading 1904.90, HTSUS;

(6) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(7) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(8) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; and

(9) Except as provided in paragraphs (b)(1) through (b)(8) of this section and General Note 29(n), HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) Textile and apparel goods. (1) General. Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 29(n), HTSUS, will nevertheless be considered to be an originating good if:

(i) The total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.10.30,

5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) Exception for goods containing elastomeric yarns. A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, “wholly formed” means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of a Party.

(3) Yarn, fabric, or fiber. For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term “component of the good that determines the tariff classification of the good” means all of the fibers in the yarn, fabric, or group of fibers.

#### **§ 10.599 Fungible goods and materials.**

(a) General. A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term “inventory management method” means:

- (1) Averaging;
- (2) “Last-in, first-out;”
- (3) “First-in, first-out;” or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

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

#### **§ 10.600 Accessories, spare parts, or tools.**

(a) General. Accessories, spare parts, or tools that are delivered with a good and that form part of the good’s standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 29(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they

appear specified or separately identified in the invoice for the good; and

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

(a) Regional value content. If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.595 of this subpart.

#### **§ 10.601 Retail packaging materials and containers.**

(a) Effect on tariff shift rule. Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the CAFTA-DR is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 29(n), HTSUS.

(b) Effect on regional value content calculation. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Guatemalan Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.596(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is \$10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method,  $RVC = ((AV - VNM)/AV) \times 100$  (see § 10.595(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their \$10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would not be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method,  $RVC = (VOM/AV) \times 100$  (see § 10.595(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

#### **§ 10.602 Packing materials and containers for shipment.**

(a) Effect on tariff shift rule. Packing materials and containers for shipment, as defined in § 10.593(m) of this subpart, are to be disregarded in determining whether the non-originating materials used

in the production of the good undergo an applicable change in tariff classification set out in General Note 29(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) Effect on regional value content calculation. Packing materials and containers for shipment, as defined in § 10.593(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Producer A of the Dominican Republic produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in the Dominican Republic. The shipping container is originating. The value of the shipping container determined under section § 10.596(a)(2) of this subpart is \$3. Good C is subject to a regional value content requirement. The transaction value of good C is \$100, which includes the \$3 shipping container. The United States importer decides to use the build-up method,  $RVC = (VOM/AV) \times 100$  (see § 10.595(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a \$3 deduction for the value of the shipping container. Therefore, the AV is \$97 (\$100-\$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

#### **§ 10.603 Indirect materials.**

An indirect material, as defined in § 10.582(m) of this subpart, will be considered to be an originating material without regard to where it is produced.

Example. Honduran Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.594(b)(1) of this subpart and General Note 29(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

**§ 10.604 Transit and transshipment.**

(a) **General.** A good that has undergone production necessary to qualify as an originating good under § 10.594 of this subpart will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production 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; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) **Documentary evidence.** An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. 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.

**§ 10.605 Goods classifiable as goods put up in sets.**

Notwithstanding the specific rules set forth in General Note 29(n), HTSUS, 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 unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

**Tariff Preference Level****§ 10.606 Filing of claim for tariff preference level.**

A cotton or man-made fiber apparel good of Nicaragua described in § 10.607 of this subpart that does not qualify as an originating good under § 10.594 of this subpart may nevertheless be entitled to preferential tariff treatment under the CAFTA-DR 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 (9915.61.01) immediately above the applicable subheading in Chapter 61 or 62 of the HTSUS under which each non-originating cotton or man-made fiber apparel good is classified.

**§ 10.607 Goods eligible for tariff preference level claims.**

Goods eligible for a TPL claim consist of cotton or man-made fiber apparel goods provided for in U.S. Note 15(b), Subchapter XV, Chapter 99, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of Nicaragua, and that meet the applicable conditions for preferential tariff treatment under the CAFTA-DR, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 15(c), Subchapter XV, Chapter 99, HTSUS.

**§ 10.608 Submission of certificate of eligibility.**

An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber apparel good must submit a certificate of eligibility issued by an authorized official of the Government of Nicaragua, demonstrating that the good is eligible for entry under the applicable TPL, as set forth in § 10.607 of this subpart. The certificate of eligibility must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose.

**§ 10.609 Transshipment of non-originating cotton or man-made fiber apparel goods.**

(a) General. A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good:

(1) Undergoes production 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; or

(2) Does not remain under the control of customs authorities in the territory of a non-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 requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with these requirements 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.

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

(a) Effect of noncompliance. 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 § 10.609(a) of this subpart were met.

### **Origin Verifications and Determinations**

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

(a) Verification. A claim for preferential tariff treatment made under § 10.583(b) of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under CAFTA-DR for goods imported into the United States may be conducted by means of one or more of the following:

- (1) Written requests for information from the importer, exporter, or producer;
- (2) Written questionnaires to the importer, exporter, or producer;
- (3) Visits to the premises of the exporter or producer in the territory of the Party in which the good is produced, to review the records of the type referred to in § 10.589(c)(1) of this subpart or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and
- (4) Such other procedures to which the Parties may agree.

(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.

#### **§ 10.617 Special rule for verifications in a Party of U.S. imports of textile and apparel goods.**

(a) Procedures to determine whether a claim of origin is accurate.  
(1) General. For the purpose of determining that a claim of origin for

a textile or apparel good is accurate, CBP may request that the government of a Party conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) Actions during a verification. While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) Actions following a verification. On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(b) Procedures to determine compliance with applicable customs laws and regulations of the U.S. (1) General. For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of a Party conduct a verification.

(2) Actions during a verification. While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise

subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) Actions following a verification. On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(c) Denial of permission to conduct a verification. If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification.

(d) Assistance by U.S. officials in conducting a verification abroad. U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of a Party, along with the competent authorities of the Party, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from a Party to the United States.

(e) Continuation of appropriate action. CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

**§ 10.618 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 § 10.583(b) 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 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 29, HTSUS, and in §§ 10.593 through 10.605 of this subpart, the legal basis for the determination.

**§ 10.619 Repeated false or unsupported preference claims.**

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the CAFTA-DR rules of origin set forth in General Note 29, HTSUS, CBP may suspend preferential tariff treatment under the CAFTA-DR to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 29, HTSUS.

**Penalties****§ 10.620 General.**

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

**§ 10.621 Corrected claim or certification by importers.**

An importer who makes a corrected claim under § 10.583(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

**§ 10.622 Corrected certification by U.S. exporters or producers.**

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United

States who promptly and voluntarily provides written notification pursuant to § 10.589(b) with respect to the making of an incorrect certification.

**§ 10.623 Framework for correcting claims or certifications.**

(a) “Promptly and voluntarily” defined. Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

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

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

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

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) Exception in cases involving fraud or subsequent incorrect claims. (1) Fraud. Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term “fraud” will have the meaning set forth in paragraph (C)(3) of Appendix B to Part 171 of this chapter.

(2) Subsequent incorrect claims. An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) Statement. For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

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

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

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

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which are unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

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

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

##### **§ 10.624 Goods re-entered after repair or alteration in a Party.**

(a) General. This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in a Party as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in a Party, 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 that 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 duty-free treatment after repair or alteration. 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 a Party, are incomplete for their intended use and for which the processing operation performed in the Party 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 a Party after having been exported for repairs or alterations and which are claimed to be duty free.

#### **Retroactive Preferential Tariff Treatment for Textile and Apparel Goods**

##### **§ 10.625 Refunds of excess customs duties.**

(a) Applicability. Section 205 of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act,

as amended by section 1634(d) of the Pension Protection Act of 2006, provides for the retroactive application of the Agreement and payment of refunds for any excess duties paid with respect to entries of textile and apparel goods of eligible CAFTA-DR countries that meet certain conditions and requirements. Those conditions and requirements are set forth in paragraphs (b) and (c) of this section.

(b) General. Notwithstanding 19 U.S.C. 1514 or any other provision of law, and subject to paragraph (c) of this section, a textile or apparel good of an eligible CAFTA-DR country that was entered or withdrawn from warehouse for consumption on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to the last CAFTA-DR country will be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and CBP will refund any excess customs duties paid with respect to such entry, with interest accrued from the date of entry, provided:

(1) The good would have qualified as an originating good under section 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; and

(2) Customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid.

(c) Request for liquidation or reliquidation. Liquidation or reliquidation may be made under paragraph (b) of this section with respect to an entry of a textile or apparel good of an eligible CAFTA-DR country only if a request for liquidation or reliquidation is filed with the CBP port where the entry was originally filed within 90 days after the date of the entry into force of the Agreement for the last CAFTA-DR country, and the request contains sufficient information to enable CBP:

(1) To locate the entry or to reconstruct the entry if it cannot be located; and

(2) To determine that the good satisfies the conditions set forth in paragraph (b) of this section.

(d) Definitions. For purposes of this section:

(1) “Eligible CAFTA-DR country” means a country that the United States Trade Representative has determined, by notice published in the **Federal Register**, to be an eligible country for purposes of section 205 of the Act;

(2) “Last CAFTA-DR country” means, of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, the last country for which the Agreement enters into force; and

(3) “Textile or apparel good” means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), other than a good listed in Annex 3.29 of the Agreement.

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

4. The general authority citation for Part 24 and 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)(9) to read as follows:

**§ 24.23 Fees for processing merchandise.**

\* \* \* \* \*

(c) \* \* \*

(9) 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 section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (see also General Note 29, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005.

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

6. 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.

\* \* \* \* \*

7. 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 Dominican Republic-Central America-U.S. Free Trade Agreement, and the U.S.-Morocco Free Trade Agreement are contained in Part 10, Subparts H, I, J, and M of this chapter, respectively.

### PART 163 - RECORDKEEPING

8. 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. 9. Section 163.1(a)(2) is amended by redesignating paragraphs (a)(2)(x) and (a)(2)(xi) as paragraphs (a)(2)(xi) and (a)(2)(xii) and adding a new paragraph (a)(2)(x) to read as follows:

#### § 163.1 Definitions.

\* \* \* \* \*

(a) \* \* \*  
 (2) \* \* \*

(x) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the Dominican Republic-Central America-United States-Free Trade Agreement (CAFTA-DR), including an CAFTA-DR importer's certification.

\* \* \* \* \*

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

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

\* \* \* \* \*

IV. \* \* \*

§ 10.585 CAFTA-DR records that the importer may have in support of a CAFTA-DR claim for preferential tariff treatment, including an importer's certification.

\* \* \* \* \*

### PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

11. 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.

12. Section 178.2 is amended by adding new listings for “§§ 10.583 and 10.584” to the table in numerical order to read as follows:

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

19 CFR Section	Description	OMB control No.
* * *	* * *	* *
§§ 10.583 and 10.584.	Claim for preferential tariff treatment under the Dominican Republic-Central America-US Free Trade Agreement.	1651-0125
* * *	* * *	* *

\* \* \* \* \*

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

Approved: June 9, 2008

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

[Published in the Federal Register, June 13, 2008 (73 FR 33673)]

*General Notice*

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Report of Diversion**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0025

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Report of Diversion. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information col-

lection was previously published in the **Federal Register** (73 FR 15767) on March 25, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before July 10, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Report of Diversion

**OMB Number:** 1651-0025

**Form Number:** Form CBP-26

**Abstract:** CBP uses Form-26 to track vessels traveling coastwise from U.S ports to other U.S. ports when a change occurs in scheduled itineraries. This is required for enforcement of the Jones Act (46 U.S.C. App. 883) and for continuity of vessel manifest information and permits to proceed actions.

**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:** Business or other for-profit institutions  
**Estimated Number of Respondents:** 2800  
**Estimated Time Per Respondent:** 5 minutes  
**Estimated Total Annual Burden Hours:** 233

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: June 3, 2008

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

[Published in the Federal Register, June 10, 2008 (73 FR 32724)]

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#### **AGENCY INFORMATION COLLECTION ACTIVITIES:**

##### **Permit to Transfer Containers to a Container Station**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0049

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Permit to Transfer Containers to a Container Station. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 15765) on March 25, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before July 10, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Permit to Transfer Containers to a Container Station

**OMB Number:** 1651-0049

**Form Number:** N/A

**Abstract:** This information collection is needed in order for a container station operator to receive a permit to transfer a container to a container station. In addition, the station operator must furnish a list of names, addresses, etc., of the persons they employ if requested by CBP officials.

**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:** Business or other for-profit institutions

**Estimated Number of Respondents:** 350

**Estimated Number of Annual Responses:** 1,400

**Estimated Time Per Respondent:** 20 minutes

**Estimated Total Annual Burden Hours:** 466

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: June 3, 2008

TRACEY DENNING,  
*Agency Clearance Officer,  
Customs and Border Protection.*

[Published in the Federal Register, June 10, 2008 (73 FR 32726)]

### **AGENCY INFORMATION COLLECTION ACTIVITIES:**

#### **Documentation Requirements for Articles Entered Under Special Tariff Treatment Provisions**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0067

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Documentation Requirements for Articles Entered Under Special Tariff Treatment Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 15762-15763) on March 25, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before July 10, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection,

and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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

**OMB Number:** 1651-0067

**Form Number:** N/A

**Abstract:** This collection is used to ensure that certain imported merchandise is eligible for reduced duty treatment under provisions of Harmonized Tariff Schedule of the United States.

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

**Type of Review:** Extension (without change)

**Affected Public:** Business or other for-profit institutions

**Estimated Number of Respondents:** 19,433

**Estimated Time Per Respondent:** 45 minutes

**Estimated Total Annual Burden Hours:** 14,575

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: June 3, 2008

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Automated Clearinghouse Credit**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0078

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Automated Clearinghouse Credit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 15765) on March 25, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before July 10, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including

the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Automated Clearinghouse Credit

**OMB Number:** 1651-0078

**Form Number:** N/A

**Abstract:** The information is to be used by CBP to send information to the company (such as revised format requirements) and to contact participating companies if there is a payment problem.

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

**Type of Review:** Extension (without change)

**Affected Public:** Business or other for-profit institutions

**Estimated Number of Respondents:** 65

**Estimated Total Annual Responses:** 3000

**Estimated Time Per Response:** 5 minutes

**Estimated Total Annual Burden Hours:** 249

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: June 3, 2008

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

[Published in the Federal Register, June 10, 2008 (73 FR 32726)]

#### AGENCY INFORMATION COLLECTION ACTIVITIES:

##### Application of Waiver of Passport or Visa

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0107

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following infor-

mation collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Waiver of Passport or Visa (Form I-193). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 15763) on March 25, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before July 10, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Application for Waiver of Passport and/or Visa

**OMB Number:** 1651-0107

**Form Number:** I-193

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

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

**Type of Review:** Extension (without change)

**Affected Public:** Individuals

**Estimated Number of Respondents:** 25,000

**Estimated Time Per Respondent:** 10 minutes

**Estimated Total Annual Burden Hours:** 4,150

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: June 3, 2008

TRACEY DENNING,  
*Agency Clearance Officer,  
Customs and Border Protection.*

[Published in the Federal Register, June 10, 2008 (73 FR 32728)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Alien Crewman Landing Permit

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0114

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Alien Crewman Landing Permit (Form I-95). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 15761-15762) on March 25, 2008, allowing for a 60-day comment period. This notice allows for an additional

30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before July 10, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Alien Crewman Landing Permit

**OMB Number:** 1651-0114

**Form Number:** Form I-95

**Abstract:** This collection of information is used by CBP to document conditions and limitations imposed upon an alien crewman applying for benefits under Section 251 of the Immigration and Nationality Act.

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

**Type of Review:** Extension (without change)

**Affected Public:** Individuals

**Estimated Number of Respondents:** 433,000

**Estimated Time Per Respondent:** 5 minutes  
**Estimated Total Annual Burden Hours:** 35,939

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: June 3, 2008

TRACEY DENNING,  
*Agency Clearance Officer,  
Customs and Border Protection.*

[Published in the Federal Register, June 10, 2008 (73 FR 32727)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, June 11, 2008*

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.

William G. Rosoff for SANDRA L. BELL,  
*Executive Director,  
Regulations and Rulings,  
Office of International Trade.*

**PROPOSED REVOCATION OF THREE RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF “MARBITS”**

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

**ACTION:** Notice of proposed revocation three tariff classification ruling letters and proposed revocation of treatment relating to the classification of “marbits.”

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to revoke three ruling letters relating to the tariff classification of the extruded marshmallow products known as “marbits” under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical

transactions. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before July 25, 2008.

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

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 572-8789.

**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, this notice advises interested parties that CBP intends to revoke three ruling letters pertaining to the tariff classification of marbits. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N009017, dated June 5, 2007 (Attachment A), NY H86740, dated February 21, 2002 (Attachment B), and NY J80284, dated February 3, 2003 (Attachment C), this notice covers any rul-

ings on this 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 ones identified. No further rulings have been found. 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 advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N009017, NY H86740 and NY J80284, CBP classified marbits under heading 2106, HTSUS, which provides for: "Food preparations not elsewhere specified or included." CBP has determined that the tariff classification set forth in those rulings is incorrect. It is now CBP's position that marbits are correctly classified under subheading 1704.90.3590, HTSUS, which provides for: "Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N009017, dated June 5, 2007, NY J80284, dated February 3, 2003, NY H86740, dated February 21, 2002, and any other ruling not specifically identified, to reflect the proper classification of the marbits according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H014783 (Attachment D), HQ H027857 (Attachment E), and HQ H027858 (Attachment F). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 5, 2008

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

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
N009017  
June 5, 2007  
CLA-2-21:RR:NC:N2:228  
CATEGORY: Classification  
TARIFF NO.: 2106.90.9400

MR. JOHN PETERSON  
NEVILLE PETERSON  
*17 State Street*  
*New York, NY 10004*

RE: The tariff classification of marbits from Canada

DEAR MR.PETERSON:

In your letters dated November 24, 2006, January 30, 2007 and March 26, 2007, on behalf of General Mills, Inc., Minneapolis, MN, you requested a tariff classification ruling.

Descriptive literature and ingredients information were submitted with your first two letters, and a sample accompanied your March letter. The sample was forwarded to the Customs laboratory for analysis. The product, "marbits," is described as "dried marshmallow confections" used as ingredients in retail-packed cereal products. The samples are dry, brittle, multi-colored pieces, approximately 1/2-inch wide and 1/4-inch thick, in the form of hearts, half-moons, hats, and other objects. The ingredients breakdown provided with your November letter states the pieces are composed of approximately 51 percent sugar, 19 percent water, 11 percent corn syrup, 10 percent dextrose, 7 percent corn starch, 2 percent gelatin, and less than one percent flavoring. The laboratory analysis found the sample contained 66.2 percent sucrose and 14.8 percent glucose on a dry weight basis.

In your November letter, you suggested the marbits should be classified in subheading 1704.90.3550, Harmonized Tariff Schedule of the United States (HTSUS), the provision for other sugar confectionery not containing cocoa, confections or sweetmeats ready for consumption. We do not agree. Noting the product's manner of presentation when imported and use in the United States subsequent to importation, it will be classified elsewhere.

The applicable subheading for the marbits will be 2106.90.9400, HTSUS, which provides for food preparations not elsewhere specified or included . . . other . . . other . . . other . . . articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17 . . . other. The rate of duty will be 28.8 cents per kilogram plus 8.5 percent 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 646-733-3029.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
NY H86740  
February 21, 2002  
CLA-2-21:RR:NC:2:228 H86740  
CATEGORY: Classification  
TARIFF NO.: 2106.90.9500, 2106.90.9700

MS. ANN WAYMOUTH  
KELLOGG COMPANY  
235 Porter Street  
Battle Creek, MI 49014

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of "Marbits" from Canada or Mexico; Article 509

DEAR MS. WAYMOUTH:

In your letter dated December 17, 2001, you requested a ruling on the status of "Marbits" from Canada and Mexico under the NAFTA.

Samples submitted with your letter were forwarded to the United States Customs laboratory for analysis. "Marbits" are cylindrical-shaped, dried marshmallow pieces measuring approximately  $\frac{3}{8}$  inch tall and  $\frac{1}{4}$  inch in diameter. They consist of sugar (over 10 but less than 65 percent, by dry weight), corn syrup, cornstarch, dextrose, gelatin, vanilla flavor, and sodium hexamet. The Marbits are used as an ingredient in the production of a retail-packed cereal product.

The applicable subheading for the Marbits, when made in Canada, and imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 2106.90.9500 Harmonized Tariff Schedules of the United States (HTS), which provides for food preparations not elsewhere specified or included . . . other . . . articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 . . . described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem.

When made in Mexico, or when made in Canada and the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the Marbits will be classified in subheading 2106.90.9700, HTS, and dutiable at the rate of 28.8 cents per kilogram plus 8.5 percent ad valorem.

When classified in 2106.90.9500, HTS, the Marbits, being wholly obtained or produced entirely in the territory of the United States and Canada will meet the requirements of HTSUSA General Note 12(b)(i), and will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

The Marbits, wholly obtained or produced in the United States and Mexico, classified in subheading 2106.90.9700, HTS, entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits described in note 20 to subchapter 6 of chapter 99, HTS, will be free of duty pursuant to subheading 9906.21.50, HTS. If the quantitative limits of note 20 to subchapter 6 of chapter 99 have been reached, and if the product is valued not over 74.8 cents per kilogram, it will be dutiable at the rate of 7 cents per kilogram, in subheading 9906.21.51, HTS. If valued over 74.8 cents per kilogram, the rate of duty will be 9.4 percent ad valorem, pursuant to subheading 9906.21.52, HTS, upon compliance with all applicable laws, regulations and agreements.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 646-733-3029.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
NY J80284  
February 3, 2003  
CLA-2-21:RR:NC:2:228 J80284  
CATEGORY: Classification  
TARIFF NO.: 2106.90.9400

MR. CLARK D. BIEN  
GREAT LAKES INGREDIENTS,  
LLC 2037 Geddes Avenue  
Ann Arbor, MI 48104

RE: The tariff classification of "marbits" from Mexico and Canada

DEAR MR. BIEN:

In your letter dated January 21, 2003, you requested a tariff classification ruling.

An ingredients breakdown and a sample of a product using the imported article were submitted with your letter. The sample was examined and dis-

posed of. The product, “marbits” is described as an extruded marshmallow product, imported in bulk containers, and used as an ingredient in breakfast cereals. The samples were in the form of dry, brittle, multi-colored pieces approximately ½-inch wide and 3/16-inch thick, shaped like the head of Mickey Mouse. The products are said to be composed of 70 percent sugar, 11 percent corn starch, 9 percent corn syrup, 7 percent dextrose, 2 percent gelatin, and one percent flavor, color, and sodium hexamet.

In your letter you suggested the marbits should be classified in subheading 2106.90.5870, Harmonized Tariff Schedule of the United States (HTS), as a food preparation not elsewhere specified or included, of gelatin. We disagree. The quantity and function of the other ingredients used to make the marbits impact on the tariff classification, and lead us to conclude that your suggested subheading is not appropriate.

The applicable subheading for the marbits will be 2016.90.9400, HTS, which provides for food preparations not elsewhere specified or included . . . other . . . other . . . articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17 . . . other. The rate of duty will be 28.8 cents per kilogram plus 8.5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 646-733-3029.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H014783  
**CLA-2 OT: RR: CTF: TCM H014783 RM**  
**CATEGORY:** Classification  
**TARIFF NO.:** 1704.90.3590

JOHN PETERSON, ESQ.  
NEVILLE PETERSON, LLP  
*Counselors at Law*  
*17 State Street, 19th Floor*  
*New York, NY 10004*

**RE:** Revocation of New York Ruling Letter N009017, dated June 5, 2007;  
Classification of Marbits

DEAR MR. PETERSON:

This letter is in response to your request of July 25, 2007, for reconsideration of New York Ruling Letter (NY) N009017, issued to you on behalf of your client, General Mills, Inc., on June 5, 2007. In that ruling, noting the product’s imported condition and use, U.S. Customs and Border Protection (CBP) classified the subject “marbits” under heading 2106, Harmonized Tar-

iff Schedule of the United States (HTSUS), as food preparations not elsewhere specified or included. It is your contention that the proper classification for marbits is under heading 1704, HTSUS, as sugar confectionery. We have reviewed NY N009017 and found it to be in error.

**FACTS:**

“Marbits” are extruded marshmallow products used as toppings in breakfast cereals. They are imported into the U.S. in bulk. The samples provided are in the form of dry, brittle, multi-colored pieces shaped like hearts, half-moons, hats, and other objects. Each is approximately ½-inch wide and ¼-inch thick. A CBP laboratory analysis found the samples contained 66.2 percent sucrose and 14.8 percent glucose on a dry weight basis.

**ISSUE:**

What is the proper tariff classification of the marbits under the HTSUS?

**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:

1704	Sugar confectionery (including white chocolate), not containing cocoa:	*	*	*
1704.90	Other:			
	Confections or sweetmeats ready for consumption:	*	*	*
	Other:			
1704.90.35	Other . . .			
	Put up for retail sale:	*	*	*
1704.90.3550	Other . . .			
1704.90.3590	Other . . .			
2106	Food preparations not elsewhere specified or included:	*	*	*
2106.90	Other:			
	Other:			
	Other:			
	Other:			

## Other:

\* \* \*

Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17:

\* \* \*

2106.90.94

Other 2/

In your submission, you argue that marbits are classifiable in heading 1704, HTSUS, as sugar confectionery. You contend that the product is “ready for consumption to be used as candy toppings in retail-packed cereal,” a use analogous to the marshmallow products used as toppings which have traditionally been classified in heading 1704, HTSUS. Moreover, you state that heading 1704, HTSUS, is not a “use provision,” but an *eo nomine* provision for confectionery, and that the marbits fit within the common meaning of the term. Finally, you assert that the goods in question are more specifically described in heading 1704, HTSUS, than in heading 2106, HTSUS, and therefore, the former should prevail in accordance with GRI 3(a).

CBP previously classified the marbits in heading 2106, HTSUS, as food preparations not elsewhere specified or included. By the terms of this heading, the marbits can only be classified here if they are not provided for elsewhere in the tariff.

The main issue to be resolved is whether the merchandise is a sugar confectionery of heading 1704, HTSUS. The HTSUS does not contain a statutory definition for the term “confectionery.” However, CBP has adopted the meaning of the term given by the Court of International Trade (CIT) in Leaf Brands, Inc. v. United States, (“Leaf Brands”) 70 Cust. Ct. 66 (1973).<sup>1</sup> The Court defined “confectionery” as the “many kinds of sweet-tasting articles which are eaten as such for their taste and flavor without further preparation and which are usually sold in confectionery outlets.”<sup>2</sup> *Id.* at 71. Further, the Court found that whether an article is confectionery is determined by its chief use as a confection, which may be evidenced by its character and design and the manner in which it is sold (i.e., through candy brokers, in confectionery outlets), rather than by its shape and texture.<sup>3</sup> *Id.* at 72. Following Leaf Brands, CBP has consistently taken the position that a confection is a product that, in its condition as imported, is ready for consumption at

<sup>1</sup> This case was decided under the Tariff Schedules of the United States (TSUS). Decisions by the courts interpreting the TSUS are not deemed dispositive under the HTSUS. However, on a case-by-case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. See House Conference Report No. 100–576, dated April 20, 1998, on the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418). In this instance, we consider Leaf Brands v. United States, 70 Cust. Ct. 66 (1973), to be instructive.

<sup>2</sup> The Leaf Brands court relied on dictionaries and past interpretations of the terms “candy” and “confectionery” by the courts.

<sup>3</sup> The concept of “chief use,” which stemmed from General Interpretative Rule 10(e)(i), TSUS, has been superseded by the concept of “principal use” contained in Additional U.S. Rule of Interpretation 1(a), HTSUS.

retail as a confectionery and is marketed as such; it is not an ingredient of another food product. See, for example, HQ 086101, dated February 27, 1990 (peanut flavored chips), HQ 085206, dated February 23, 1990 (white chocolate in 5 kg blocks), HQ 955580, dated July 30, 2002, and HQ 965211, dated August 1, 2002 (chocolate fish).

Contrary to your assertion that heading 1704, HTSUS, is an *eo nomine* provision for confectionery and is not a use provision, CBP has consistently found that heading 1704, HTSUS, is a “principal use” provision. The Leaf Brands court affirmed this understanding when it construed the terms of the heading in accordance with General Interpretative Rule 10(e)(i), TSUS (now, U.S. Additional Rule of Interpretation 1(a)). U.S. Additional Rule of Interpretation 1(a) provides for classification of goods governed by principal use and states:

In the absence of special language or context which otherwise requires — a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

Generally, the courts have provided several factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: (1) general physical characteristics, (2) expectation of the ultimate purchaser, (3) channels of trade, (4) environment of sale (accompanying accessories, manner of advertisement and display), (5) use in the same manner as merchandise which defines the class, (6) economic practicality of so using the import, and (7) recognition in the trade of this use. See Lennox Collections v. United States, 20 CIT 194, 196 (1996). See also United States v. Carborundum Co., 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976). In Leaf Brands, the court considered the physical characteristics, channels of trade and environment of sale, and the actual use of the product at issue.

In this instance, it is undisputed that marbits are small marshmallows (they are composed of the standard ingredients of marshmallows, specifically, sugar, water, corn syrup, dextrose, corn starch, gelatin, artificial flavoring, and sodium hexamet, and have a similar consistency). Further, they are recognized and used as marshmallows (e.g., they are advertised on the box of a popular cereal as “marshmallow bits”). Moreover, in the condition as imported, they are ready for consumption without further preparation, as marshmallows. That they are packaged with cereal after they are imported is of no moment, as they are goods of the kind usually sold in confectionery outlets.

CBP has previously established that marshmallows meet the definition of confectionery of heading 1704, HTSUS, because they are eaten for their sweet taste without further preparation and are usually sold at confectionery outlets. See, e.g., NY 817105, dated December 8, 1995, NY M84135, dated July 3, 2006, and NY M86169, dated September 27, 2006. Because marbits are marshmallows, we find that they belong to the same class or kind as the goods classified as confectioneries. Indeed, marbits are analogous to the mini marshmallows used as toppings for hot chocolate mixes, which CBP has classified as confectioneries of heading 1704, HTSUS. See HQ N010617, dated June 1, 2007, NYM86167, dated September 27, 2006,

NY M85240, dated July 26, 2006, and NY M84135, dated July 3, 2006. Accordingly, marbits are classified in subheading 1704.90.9590, HTSUS. We note that, contrary to your suggestion, the marbits are not classified in subheading 1704.90.3550, HTSUS, because they are not imported “put up for retail sale” but are imported in bulk.

Based on the foregoing, we now find that the merchandise does not meet the terms of heading 2106, HTSUS, because it is “elsewhere included” in the tariff — in heading 1704, HTSUS, as sugar confectionery.

**HOLDING:**

By application of GRI 1, the marbits are correctly classified under heading 1704, HTSUS, in subheading 1704.90.3590, as “Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Other: Other: Other.” The 2007 column one, general rate of duty is 5.6 percent *ad valorem*.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301–575–0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

Duty rates are provided for convenience only and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY N009017, dated June 5, 2007, is hereby revoked.

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division.*

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H027857

**CLA-2 OT: RR: CTF: TCM H027857 RM**

**CATEGORY:** Classification

**TARIFF NO.:** 1704.90.3590

MR. CLARK D. BIEN  
GREAT LAKES INGREDIENTS, LLC  
2037 Geddes Avenue  
Ann Arbor, MI 48104

**RE:** Revocation of New York Ruling Letter J80284, dated February 3, 2003; Classification of Marbits

DEAR MR. BIEN:

This is in reference to New York Ruling Letter (NY) J80284, issued to you on behalf of Great Lakes Ingredients, LLC, on February 3, 2003. In that ruling, U.S. Customs and Border Protection (CBP) determined that the subject “marbits” were classified under subheading 2106.90.9400, Harmonized Tar-

iff Schedule of the United States (HTSUS). We have reviewed NY J80284 and determined that the tariff classification of the marbits is incorrect.

**FACTS:**

In NY J80284, CBP described the marbits at issue as:

[A]n extruded marshmallow product, imported in bulk containers, and used as an ingredient in breakfast cereals. The samples were in the form of dry, brittle, multi-colored pieces approximately 1/2 inch wide and 3/16 inch thick, shaped like the head of Mickey Mouse. The products are said to be composed of 70 percent sugar, 11 percent corn starch, 9 percent corn syrup, 7 percent dextrose, 2 percent gelatin, and 1 percent flavor, color, and sodium hexamet.

**ISSUE:**

What is the proper tariff classification of the marbits under the HTSUS?

**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:

1704	Sugar confectionery (including white chocolate), not containing cocoa: * * *
1704.91	Other: Confections or sweetmeats ready for consumption: * * * Other:
1704.90.36	Other . . . * * *
1704.90.3590	Other . . .
2106	Food preparations not elsewhere specified or included: * * *
2106.91	Other: Other: Other: Other: Other:

\*                    \*                    \*

Articles containing over 65 per-  
cent by dry weight of sugar de-  
scribed in additional U.S. note 2  
to chapter 17:

\*                    \*                    \*

2106.90.94

Other 2/

CBP previously classified the marbits in heading 2106, HTSUS, as food preparations not elsewhere specified or included. For the reasons set forth below, we now find that the merchandise does not meet the terms of the heading because it is “elsewhere specified or included” as sugar confectionery of heading 1704, HTSUS.

Heading 1704, HTSUS, provides for sugar confectionery. The HTSUS does not contain a statutory definition for the term “confectionery.” However, CBP has adopted the meaning of the term given by the Court of International Trade (CIT) in *Leaf Brands, Inc. v. United States*, (“*Leaf Brands*”) 70 Cust. Ct. 66 (1973).<sup>4</sup> The Court defined “confectionery” as the “many kinds of sweet-tasting articles which are eaten as such for their taste and flavor without further preparation and which are usually sold in confectionery outlets.”<sup>5</sup> *Id.* at 71. Further, the Court found that whether an article is confectionery is determined by its chief use as a confection, which may be evidenced by its character and design and the manner in which it is sold (i.e., through candy brokers, in confectionery outlets), rather than by its shape and texture.<sup>6</sup> *Id.* at 72. Following *Leaf Brands*, CBP has consistently taken the position that a confection is a product that, in its condition as imported, is ready for consumption at retail as a confectionery and is marketed as such; it is not an ingredient of another food product. See, for example, HQ 086101, dated February 27, 1990 (peanut flavored chips), HQ 085206, dated February 23, 1990 (white chocolate in 5 kg blocks), HQ 955580, dated July 30, 2002, and HQ 965211, dated August 1, 2002 (chocolate fish).

In this instance, it is undisputed that marbits are small marshmallows (they are composed of the standard ingredients of marshmallows, specifically, sugar, water, corn syrup, dextrose, corn starch, gelatin, artificial flavoring, and sodium hexamet, and have a similar consistency). Moreover, in their condition as imported, they are ready for consumption without further

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<sup>4</sup> This case was decided under the Tariff Schedules of the United States (TSUS). Decisions by the courts interpreting the TSUS are not deemed dispositive under the HTSUS. However, on a case-by-case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. See House Conference Report No. 100–576, dated April 20, 1998, on the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418). In this instance, we consider *Leaf Brands v. United States*, 70 Cust. Ct. 66 (1973), to be instructive.

<sup>5</sup> The *Leaf Brands* court relied on dictionaries and past interpretations of the terms “candy” and “confectionery” by the courts.

<sup>6</sup> The concept of “chief use,” which stemmed from General Interpretative Rule 10(e)(i), TSUS, has been superseded by the concept of “principal use” contained in Additional U.S. Rule of Interpretation 1(a), HTSUS.

preparation, as marshmallows, and are goods of the kind usually sold in confectionery outlets.

CBP has previously established that marshmallows meet the definition of confectionery because they are eaten for their sweet taste without further preparation and are usually sold at confectionery outlets. See, e.g., NY 817105, dated December 8, 1995, NY M84135, dated July 3, 2006, and NY M86169, dated September 27, 2006. Because marbits are marshmallows, we find that they belong to the same class or kind as the goods classified as confectioneries. Indeed, marbits are analogous to the mini marshmallows used as toppings for hot chocolate mixes which CBP has classified as confectioneries of heading 1704, HTSUS. See HQ N010617, dated June 1, 2007, NYM86167, dated September 27, 2006, NY M85240, dated July 26, 2006, and NY M84135, dated July 3, 2006.

**HOLDING:**

By application of GRI 1, marbits are correctly classified under heading 1704, HTSUS, in subheading 1704.90.3590, as “Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Other: Other: Other.” The 2008 column one, general rate of duty is 5.6 percent *ad valorem*.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

Duty rates are provided for convenience only and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY J80284, dated February 3, 2003, is hereby revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H027858  
**CLA-2 OT: RR: CTF: TCM H027858 RM**  
**CATEGORY:** Classification  
**TARIFF NO.:** 1704.90.3590

MS. ANN WAYMOUTH  
KELLOGG COMPANY  
325 Porter Street  
Battle Creek, MI 49014

**RE:** Revocation of New York Ruling Letter H86740, dated February 21, 2002; Classification of Marbits

DEAR MS. WAYMOUTH:

This is in reference to New York Ruling Letter (NY) H86740, issued to you on behalf of the Kellogg Company on February 21, 2002. In that ruling, U.S. Customs and Border Protection (CBP) determined that the subject “marbits” were classified under heading 2106, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY H86740 and found it to be incorrect.

**FACTS:**

In NY H86740, CBP described the subject marbits as:

[C]ylindrical-shaped, dried marshmallow pieces measuring approximately 3/8 inch tall and 1/4 inch in diameter. They consist of sugar (over 10 but less than 65 percent, by dry weight), corn syrup, cornstarch, dextrose, gelatin, vanilla flavor, and sodium hexamet. The marbits are used as an ingredient in the production of a retail-packed cereal product.

**ISSUE:**

What is the proper tariff classification of the marbits under the HTSUS?

**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:

1704	Sugar confectionery (including white chocolate), not containing cocoa:			
		*	*	*
1704.92	Other:			
	Confections or sweetmeats ready for consumption:			
		*	*	*
	Other:			
1704.90.37	Other . . .			
		*	*	*
1704.90.3590	Other . . .			
2106	Food preparations not elsewhere specified or included:			
		*	*	*
2106.92	Other:			

CBP previously classified the marbits in heading 2106, HTSUS, as food preparations not elsewhere specified or included. For the reasons set forth below, we now find that the merchandise does not meet the terms of the heading because it is “elsewhere specified or included” as sugar confectionery of heading 1704, HTSUS.

Heading 1704, HTSUS, provides for sugar confectionery. The HTSUS does not contain a statutory definition for the term “confectionery.” However, CBP has adopted the meaning of the term given by the Court of International Trade (CIT) in *Leaf Brands, Inc. v. United States*, (“*Leaf Brands*”) 70 Cust. Ct. 66 (1973).<sup>7</sup> The Court defined “confectionery” as the “many kinds of sweet-tasting articles which are eaten as such for their taste and flavor without further preparation and which are usually sold in confectionery outlets.”<sup>8</sup> *Id.* at 71. Further, the Court found that whether an article is confectionery is determined by its chief use as a confection, which may be evidenced by its character and design and the manner in which it is sold (i.e., through candy brokers, in confectionery outlets), rather than by its shape and texture.<sup>9</sup> *Id.* at 72. Following *Leaf Brands*, CBP has consistently taken the position that a confection is a product that, in its condition as imported, is ready for consumption at retail as a confectionery and is marketed as such; it is not an ingredient of another food product. See, for example, HQ 086101, dated February 27, 1990 (peanut flavored chips), HQ 085206, dated February 23, 1990 (white chocolate in 5 kg blocks), HQ 955580, dated July 30, 2002, and HQ 965211, dated August 1, 2002 (chocolate fish).

In this instance, it is undisputed that marbits are small marshmallows (they are composed of the standard ingredients of marshmallows, specifically, sugar, water, corn syrup, dextrose, corn starch, gelatin, artificial flavoring, and sodium hexamet, and have a similar consistency). Moreover, in their condition as imported, they are ready for consumption without further preparation, as marshmallows, and are goods of the kind usually sold in confectionery outlets.

CBP has previously established that marshmallows meet the definition of confectionery because they are eaten for their sweet taste without further preparation and are usually sold at confectionery outlets. See, e.g., NY 817105, dated December 8, 1995, NY M84135, dated July 3, 2006, and NY M86169, dated September 27, 2006. Because marbits are marshmallows, we find that they belong to the same class or kind as the goods classified as confectioneries. Indeed, marbits are analogous to the mini marshmallows used as toppings for hot chocolate mixes which CBP has classified as confectioneries of heading 1704, HTSUS. See HQ N010617, dated June 1, 2007, NYM86167, dated September 27, 2006, NY M85240, dated July 26, 2006, and NY M84135, dated July 3, 2006.

**HOLDING:**

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<sup>7</sup> This case was decided under the Tariff Schedules of the United States (TSUS). Decisions by the courts interpreting the TSUS are not deemed dispositive under the HTSUS. However, on a case-by-case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. See House Conference Report No. 100–576, dated April 20, 1998, on the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418). In this instance, we consider *Leaf Brands v. United States*, 70 Cust. Ct. 66 (1973), to be instructive.

<sup>8</sup>The *Leaf Brands* court relied on dictionaries and past interpretations of the terms “candy” and “confectionery” by the courts.

<sup>9</sup>The concept of “chief use,” which stemmed from General Interpretative Rule 10(e)(i), TSUS, has been superseded by the concept of “principal use” contained in Additional U.S. Rule of Interpretation 1(a), HTSUS.

By application of GRI 1, marbits are correctly classified under heading 1704, HTSUS, in subheading 1704.90.3590, as: “Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Other: Other: Other.” The 2008 column one, general rate of duty is 5.6 percent *ad valorem*.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

Duty rates are provided for convenience only and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY H86740, dated February 21, 2002, is hereby revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*