

U.S. Customs and Border Protection

CBP Decisions

DEPARTMENT OF THE TREASURY

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

Docket No. USCBP-2007-0063

CBP Dec. 08-28

RIN 1505-AB81

UNITED STATES – BAHRAIN FREE TRADE AGREEMENT

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with two technical corrections, interim amendments to title 19 of the Code of Federal Regulations which were published in the **Federal Register** on October 16, 2007, as CBP Dec. 07-81 to implement the preferential tariff treatment and other customs-related provisions of the United States – Bahrain Free Trade Agreement entered into by the United States and the Kingdom of Bahrain.

DATES: This final rule is effective on August 22, 2008.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Robert Abels, Office of International Trade, (202) 863-6503.

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:

On September 14, 2004, the United States and the Kingdom of Bahrain (the “Parties”) signed the U.S.–Bahrain Free Trade Agreement (“BFTA”). The stated objectives of the BFTA include creating new employment opportunities and raising the standard of living for the citizens of the Parties by liberalizing and expanding trade between them; enhancing the competitiveness of the enterprises of the Parties in global markets; establishing clear and mutually advantageous rules governing trade between the Parties; eliminating bribery and corruption in international trade and investment; fostering creativity and innovation by improving technology and enhancing the protection and enforcement of intellectual property rights; strengthening the development and enforcement of labor and environmental laws and policies; and establishing an expanded free trade area in the Middle East, thereby contributing to economic liberalization and development in the region.

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

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

U.S. Customs and Border Protection (“CBP”) is responsible for administering the provisions of the BFTA and the Act that relate to the importation of goods into the United States from Bahrain. Those customs-related BFTA provisions that require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Initial Provisions and Definitions), Chapter Two (National Treatment and Market Access for Goods), Chapter Three (Textiles and Apparel), Chapter Four (Rules of Origin), and Chapter Five (Customs Administration). On October 16, 2007, CBP published CBP Dec. 07–81 in the **Federal Register** (72 FR 58511), setting forth interim amendments to implement the preferential tar-

iff treatment and customs-related provisions of the BFTA. For a more detailed discussion of the BFTA provisions that were implemented by the interim amendments, please see CBP Dec. 07–81.

In order to provide transparency and facilitate their use, the majority of the BFTA implementing regulations set forth in CBP Dec. 07–81 were included within new Subpart N in Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which BFTA implementation was more appropriate in the context of an existing regulatory provision, the BFTA regulatory text was incorporated in an existing part within the CBP regulations. CBP Dec. 07–81 also set forth several cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new BFTA implementing regulations.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on October 16, 2007, CBP Dec. 07–81 provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule, and the prescribed public comment period closed on December 17, 2007. No comments were received in response to the solicitation of public comments in CBP Dec. 07–81.

Conclusion

Accordingly, CBP has determined that the interim regulations published as CBP Dec. 07–81 should be adopted as a final rule with two technical corrections. The technical corrections to the interim regulatory text effected by this final rule involve § 10.804, which concerns the declaration, and § 10.822, which concerns the transshipment of non-originating fabric or apparel goods. Paragraph (a)(2)(vi) of § 10.804 has been revised by adding the word “the” immediately before the word “territory” and paragraph (b) of § 10.822 has been revised by replacing the word “terms” with the word “term”.

Executive Order 12866

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 and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

CBP Dec. 07–81 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that the interim regulations involve a foreign affairs function of the United

States pursuant to § 553(a)(1) of the APA. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information in this final rule has previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0130. The collections of information in these regulations are in §§ 10.803, 10.804, 10.818, and 10.821. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the BFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the BFTA and the Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or record keeper. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Signing Authority

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

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 24

Financial and accounting procedures.

19 CFR Part 102

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

19 CFR Part 162

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

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, 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 CBP REGULATIONS

Accordingly, the interim rule amending Parts 10, 24, 102, 162, 163, and 178 of the CBP regulations (19 CFR Parts 10, 24, 102, 162, 163, and 178), which was published at 72 FR 58511 on October 16, 2007, is adopted as a final rule with two technical corrections as discussed above and set forth below.

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

1. The general authority citation for Part 10 and the specific authority for Subpart N continue 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;

* * * * *

Section 10.801 through 10.829 also issued under 19 U.S.C. 1202 (General Note 30, HTSUS) and Pub. L. 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note).

§ 10.804 [Amended]

2. In § 10.804, paragraph (a)(2)(vi) is amended by adding the word “the” immediately before the word “territory”.

§ 10.822 [Amended]

3. In § 10.822, paragraph (b) is amended by removing the word “terms” in the first sentence and adding, in its place, the word “term”.

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

Approved: July 17, 2008

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

[Published in the Federal Register, July 23, 2008 (73 FR 42679)]

General Notices

DEPARTMENT OF THE TREASURY

19 CFR Parts 4, 7, 10, 102, 134 and 177

USCBP-2007-0100

RIN 1505-AB49

Uniform Rules of Origin for Imported Merchandise

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U. S. Customs and Border Protection (“CBP”) Regulations to establish uniform rules governing CBP determinations of the country of origin of imported merchandise. This proposal would extend application of the country of origin rules codified in 19 CFR Part 102. Those rules have proven to be more objective and transparent and provide greater predictability in determining the country of origin of imported merchandise than the system of case-by-case adjudication they would replace. The proposed change also will aid an importer’s exercise of reasonable care. In addition, this document proposes to amend the country of origin rules applicable to pipe fittings and flanges, printed greeting cards, glass optical fiber, and rice preparations. Finally, this document proposes amendments to the textile regulations set forth in § 102.21 to make corrections so that the regulations reflect the language of section 334(b)(5) of the Uruguay Round Agreement Act.

DATES: Comments must be received on or before September 23, 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-2007-0100.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U. S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 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 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, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Ned Leigh, Valuation and Special Programs, Office of International Trade, 202-572-8827; Heather K. Pinnock, Tariff Classification and Marking, Office of International Trade, 202-572-8828.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed 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.

II. Background

CBP notes initially that in this document, references to the U.S. Customs Service or Customs concern the former U.S. Customs Service or actions undertaken by the former U.S. Customs Service prior to its transfer to the Department of Homeland Security (“DHS”) under the Homeland Security Act and the Reorganization Plan Modification for DHS of January 30, 2003.

All merchandise imported into the United States is subject to a country of origin determination. The origin of imported goods is determined for various purposes, including admissibility into the United States, eligibility for preferential trade programs, country of origin marking requirements, and administration of the U.S. textile import program.

It is important to note that origin-related determinations are also made in the context of the scope of investigations, orders or measures pertinent to the administration of the trade remedy laws and application of trade relief (e.g., antidumping and countervailing duties under Title VII of the Tariff Act of 1930, as amended, and safe-

guard remedies imposed pursuant to sections 201 or 421 of the Trade Act of 1974). Although such trade remedy origin-related scope determinations generally mirror the origin determinations made by CBP in its administration of the customs laws, they may differ, and in such cases, the origin-related scope determinations made by the administering authority (the Department of Commerce), and not CBP, are dispositive for purposes of administering the trade remedy laws.¹

Under current regulations, there are two primary methods that CBP uses to determine the country of origin of imported goods that are processed in, or contain materials from, more than one country. One method employs case-by-case adjudication to determine whether goods have been “substantially transformed” in a particular country, and the other method employs codified rules, also used to determine whether a good has been “substantially transformed,” primarily expressed through changes in tariff classification. The substantial transformation standard has developed from a series of federal court decisions issued over many years. The standard was first applied by the U.S. Supreme Court in the case of *Anheuser-Busch Brewing Association v. United States*, 207 U.S. 556 (1908). In that case, the Supreme Court considered whether the cleaning, sanitizing, and coating of imported beer bottle corks constituted a “manufacture” of the corks in the United States for drawback purposes. The Court concluded that the articles were not manufactured in the United States because the imported corks remained corks after the processing. According to the court, manufacture requires a “transformation; a new and different article must emerge, ‘having a distinctive name, character or use.’” *Anheuser-Busch*, 207 U.S. at 562 (quoting *Hartranft v. Wiegmann*, 121 U.S. 609, 615 (1887)).

In *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940), the U.S. Court of Customs and Patent Appeals applied the substantial transformation standard in a country of origin marking context, holding that imported wood brush blocks and toothbrush handles became products of the United States when processed into hairbrushes and toothbrushes, respectively. The court stated that the imported articles lost their identity and became “an integral part of a new article having a new name, character, and use.” Under this standard, a good must be substantially transformed in a country in order for it to be considered a product of that country. Because in almost all cases there can be only one country of origin for rules of origin purposes, the standard refers to the country in which the last substantial transformation occurs.

¹The origin-related scope determination of the administering authority (Department of Commerce) is for trade remedy purposes only; it does not alter CBP’s origin determination for customs purposes unrelated to trade remedies.

Despite its heritage and apparent straightforwardness, administration of the substantial transformation standard has not been without problems. These problems derive in large part from the inherently subjective nature of judgments made in case-by-case adjudications as to what constitutes a new and different article and whether processing has resulted in a new name, character, and use. The substantial transformation standard has evolved over many years through numerous court decisions and CBP administrative rulings. Because the rule has been applied on a case-by-case basis to a wide range of scenarios and has frequently involved consideration of multiple criteria, the substantial transformation standard has been difficult for the courts and CBP to apply consistently and has often resulted in a lack of predictability and certainty for both CBP and the trade community.

In an effort to simplify and standardize country of origin determinations, Customs developed a codified method that uses specified changes in tariff classification (tariff shifts) and other rules to express the substantial transformation concept. Under this codified method, the substantial transformation that an imported good must undergo in order to be deemed a good of the country where the change occurred is usually expressed in terms of a specified tariff shift as a result of further processing.

The U.S. Customs Service originally proposed simplified and standardized rules for determining a product's country of origin in a document published in the **Federal Register** on September 25, 1991 (56 FR 48448), proposing to amend the CBP Regulations to establish in Part 102, uniform rules governing the determination of the country of origin of imported merchandise that is wholly obtained or produced in a single country. Customs refined and expanded the original proposal with a second proposal that was published in the **Federal Register** on January 3, 1994 (59 FR 141). In a document published in the **Federal Register** (59 FR 110) on the same day, Customs applied the proposed rules on an interim basis to trade among the NAFTA countries, in order to implement a commitment under Annex 311 of NAFTA. Based on a review of the comments received in response to the January 3, 1994, proposal, Customs published another document in the **Federal Register** on May 5, 1995 (60 FR 22312) which, in part, provided further clarification and explanation of the intent behind the proposed uniform rule concept. Later that year, Congress, in section 334 of the Uruguay Round Agreements Act, mandated a codified approach for determining the origin of textile and apparel products, except for those textile and apparel products that are products of "a country that is party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1987." (This includes only the U.S.- Israel FTA.)

In Treasury Decision (T.D.) 96–48, however, published in the **Federal Register** on June 6, 1996 (61 FR 28932), Customs announced its decision not to apply the Part 102 rules more broadly than to trade among NAFTA countries, at that time. Customs noted, however, that “the proposal to extend Section 102 to all trade . . . should remain under consideration for implementation at a later date.” (In this context, it should also be noted that in *Bestfoods v. United States*, 165 F.3d 1371 (Fed. Cir. 1999), the U.S. Court of Appeals for the Federal Circuit found Part 102 valid and that it was not necessary for Congress to amend the marking statute (19 U.S.C. 1304) to effect that change because “nothing in the statute requires continued adherence to the case-by-case approach.” (165 F.3d at 1375–76.) Shortly after the June publication of T.D. 96–48, Customs, on July 1, 1996, gave effect to Section 334 of the Uruguay Round Agreements Act by implementing the Part 102 rules of origin relating to trade in textile and apparel products (found at 19 CFR 102.21), which are uniformly applicable to all textile and apparel imports except for purposes of determining whether goods originate in Israel, (*see* T.D. 95–69, published in the **Federal Register** on September 5, 1995 (60 FR 46188)).

Consequently, since 1996 the Part 102 rules have applied to all imports from Canada and Mexico, and nearly all imports of textile products, accounting for approximately 40 percent of total U.S. imports. As a result, both the importing community and CBP have extensive experience in applying the Part 102 rules to goods from Canada and Mexico. CBP’s experience in administering country of origin rules using the codified method has been that, by virtue of their greater specificity and transparency, codified rules result in determinations that are more objective and predictable than under the case-by-case adjudication method.

Therefore, CBP is proposing to extend application of the Part 102 rules of origin to all country of origin determinations made under the customs and related laws and the navigation laws of the United States, unless otherwise specified.²

Specifically with regard to determining origin for purposes of applying preferential trade agreements, the Part 102 rules will not be used where agreements specify another origin test for that purpose. For example, application of tariff benefits under NAFTA are determined by the origin rules set out in Chapter Four of that agreement. Moreover, the Part 102 rules will not be used for making preference

² Origin-related scope determinations made by the administering authority for trade remedy purposes (Department of Commerce) may differ from the origin determinations made by CBP for customs purposes. For purposes of administering the trade remedy laws, the origin-related scope determinations made by the administering authority, not CBP, are controlling. However, the origin-related scope determination of the administering authority is for trade remedy purposes only; it does not alter CBP’s origin determination for customs purposes unrelated to trade remedies.

determinations for goods other than textile and apparel goods under the United States-Israel and United States-Jordan Free Trade Agreements because it has been the understanding of U.S. negotiators and trade officials of those governments that the case-by-case method would be used for making origin determinations for preference purposes under those agreements. CBP will, however, use the appropriate sections of Part 102 to make all other origin determinations (non-preference or preference) regarding goods from Israel and Jordan.

The Part 102 rules of origin will, however, be used to administer those free trade agreements already negotiated that use the substantial transformation standard as part of the test to determine whether products qualify for reduced tariffs where under these agreements the trade negotiators had reached an understanding that the codified rules under Part 102 should guide those determinations, to date, the United States-Bahrain and United States-Morocco Free Trade Agreements. It is also CBP's intent to apply the Part 102 rules to any FTA negotiated in the future using the substantial transformation standard, unless otherwise specified.

A. Reasonable Care

Under section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify, and determine the value of imported merchandise and to provide any other information necessary to enable CBP to assess duties properly, collect accurate statistics, and determine whether any other applicable legal requirements have been met. An importer's reasonable care obligations include ensuring that CBP entry documents reflect the correct country of origin of imported merchandise.

As explained above, CBP believes that the proposed extension of the Part 102 country of origin rules to all trade will result in determinations that are more objective, transparent, and predictable and will therefore facilitate the exercise of reasonable care by importers with respect to their obligations regarding the identification of the proper country of origin of imported merchandise.

B. Tariff Shift Rules for Pipe Fittings and Flanges, Printed Greeting Cards, Glass Optical Fiber, Rice Preparations, and Certain Textile Products

After over 10 years of concurrently administering the codified and the case-by-case methods for determining origin, CBP has identified five specific product areas in which the outcomes of the two systems have been inconsistent and for which we believe the codified rules in Part 102 should be altered: pipe fittings and flanges, greeting cards, glass optical fiber, rice preparations, and certain textile products. The disparate outcomes for pipe fittings and flanges have been

known to exist since the original proposal for the Part 102 rules; they stem from disparate outcomes in earlier adjudications under the case-by-case method. The inconsistencies for printed greeting cards, glass optical fiber, and certain textile products stem from errors in drafting Part 102. The change for rice preparations stems from a recent change in practice by CBP.

1. Pipe Fittings and Flanges

In *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499, C.D. 4026, 313 F. Supp. 951 (1970), *appeal dismissed*, 57 CCPA 141 (1970), the U.S. Customs Court determined that the U.S. processor of imported rough steel forgings who subjected the forgings to several machining processes, such as boring, facing, spot facing, drilling, tapering, threading, bevelling, and heating and compressing, was the ultimate purchaser of the forgings for purposes of the country of origin marking statute, 19 U.S.C. 1304, and therefore the resulting finished fittings and flanges were not required to carry country of origin markings. In determining that the steel forgings were substantially transformed in the United States, the court found it relevant that the imported forgings were changed from producers' goods to consumers' goods.

Customs noted in a document published in the **Federal Register** on May 5, 1995 (60 FR 22312, 22315), that the Part 102 rules of origin do not stipulate that all forgings manufactured into fittings and flanges undergo a substantial transformation, and that the U.S. Court of International Trade has not employed the "consumer-good-versus-producer-good" analysis used by the Customs Court in *Midwood*. Customs further stated that it believed that the proposed Part 102 tariff shift rules relating to fittings and flanges would be sustained by the U.S. Court of International Trade in light of more recent court decisions as well as changes in industry practices since the date of the *Midwood* decision (1970). Following the 1995 notice, in T.D. 00-15, "*Final Interpretation: Application of Producers' Good Versus Consumers' Good Test in Determining Country of Origin Marking*," published in the **Federal Register** on March 12, 2000 (65 FR 13827), Customs announced that it would no longer rely on the distinction between producers' goods and consumers' goods in making origin determinations and that all pipe fittings and flanges produced in the United States from imported forgings must be marked with the country of origin of the imported forgings. In addition, Customs informed interested parties in a notice published in the **Customs Bulletin and Decisions** on June 7, 2000 (34 Cust. B. & Dec. 51 (2000)), that it intended to revoke or modify (as applicable), pursuant to 19 U.S.C. 1625(c)(1), the pipe fitting and flange Customs rulings that used the distinction between producers' and consumers' goods in making country of origin marking determinations. The no-

tice of final revocation/modification was published in the **Customs Bulletin and Decisions** on August 2, 2000 (34 Cust. B. & Dec. 10 (2000)).

In *Boltex Manufacturing Co. v. United States*, 24 CIT 972, 140 F. Supp. 2d 1339 (2000), the U.S. Court of International Trade vacated T.D. 00–15, determining that Customs had abused its discretion by encroaching on judicial authority and relying on a legal conclusion in deciding that *Midwood* and the producers' goods-consumers' goods distinction was no longer good law, rather than engaging in and providing a reasoned factual analysis in support of its determination that the forgings had to be marked. *Id.* at 1347, 1348. Accordingly, CBP rescinded the action announced in the August 2, 2000, **Customs Bulletin** notice, which had relied on vacated T.D. 00–15. Because the court in *Boltex* stated that CBP need not rely on *Midwood* in all instances, and that it may well be possible that *Midwood* would be decided differently today, CBP published in the **Customs Bulletin and Decisions** on November 21, 2001 (35 Cust. B. & Dec. 35 (2001)), a notice of proposed modification/revocation of rulings explaining why *Midwood* should no longer be followed for determining the country of origin applicable to pipe fittings and flanges. Following a review of the comments received and after further consideration of the judicial guidance in *Boltex*, CBP believes the codification of the substantial transformation standard as it relates to the processing of forgings into fittings and flanges is best reflected by the proposed rule set forth below, which is consistent with the result in *Midwood*.

Section 102.20(n) (Section XV: Chapters 72 through 83) of the CBP Regulations (19 CFR 102.20(n)) sets forth the tariff shift rule for determining the country of origin of goods imported from Canada or Mexico that are classified in headings 7301 through 7307, HTSUS, which include forgings, pipe fittings, and flanges of heading 7307. According to the rule, which requires “[a] change to heading 7301 through 7307 from any other heading, including another heading within that group,” the processing of unfinished pipe fittings and flanges into finished goods does not result in a change of origin for articles imported from a NAFTA country. As noted above, this rule was intended to codify what CBP believed reflected current industry practices and general principles enunciated by the courts since the *Midwood* decision. Based on the comments received in response to the November 21, 2001, **Customs Bulletin** notice, and in considering *Boltex*, CBP is proposing to amend the Part 102 rule for goods classified in heading 7301 through 7307 to provide (consistent with the result in *Midwood*) for a change within heading 7307 from fitting forgings or flange forgings to fittings or flanges made ready for commercial use by certain processing, including bevelling, bore threading, center or step boring, face machining, heat treating, recoining or

resizing, taper boring, machining ends or surfaces other than a gasket face, drilling bolt holes, and burring or shot blasting.

2. Greeting Cards

In this document, CBP also proposes to amend the specific change in tariff classification rule set forth in § 102.20(j) (Section X, Chapters 47 through 49) for headings 4901 through 4911 of the HTSUS, which includes printed greeting cards. This tariff shift rule currently provides for “[a] change to heading 4901 through 4911 from any other heading, including another heading within that group.” With respect to greeting cards, the effect of this rule is a change in origin of an unfinished greeting card bearing no textual message (classified in heading 4911) when it is further processed in a second country by the addition of printed text (becoming a good of heading 4909). However, an unfinished greeting card bearing some printed text (classified in heading 4909) will not satisfy the tariff shift rule (and therefore will not undergo a change in origin) when it is further processed in a second country, regardless of the work performed, as the card remains classified in heading 4909. See Headquarters Ruling Letter (“HRL”) 962603, dated May 14, 2002.

To avoid such disparate origin results for greeting cards, this document proposes to amend the tariff shift rule for HTSUS headings 4901 through 4911 in § 102.21(j) by the creation of a specific rule for heading 4909, providing for a change to that heading from any other heading except from heading 4911 when the change is a result of adding text. The effect of this amendment is to enable the country of origin of all printed greeting cards to be determined according to the country of initial printing of literary text, photographs, graphic designs, or illustrations. This revised rule for goods of heading 4909, which reflects CBP practice in applying the substantial transformation standard to printed materials, will facilitate application of the tariff shift rule when greeting cards classified under 4909, HTSUS, are printed in multiple countries.

3. Glass Optical Fiber

CBP is also proposing in this document to amend the specific change in tariff classification rule set forth in § 102.20(q) (Section XVIII, Chapters 90 through 92) for subheading 9001.10 of the HTSUS, which encompasses optical fibers and optical fiber bundles and cables. This tariff shift rule presently provides for “[a] change to subheading 9001.10 from any other subheading, except from subheading 8544.70.”

In HRL 560660 dated April 9, 1999, Customs considered whether imported glass preforms, which are solid glass rods made from fused silica, are substantially transformed in the United States for purposes of the country of origin marking statute (19 U.S.C. 1304) when “drawn” to create glass optical fiber. Customs determined that no

substantial transformation results from the drawing process as the information presented established that the specifications and qualities of the optical fiber are predetermined by the chemical and other critical attributes of the glass preform. Therefore, it was determined that the optical fiber must be marked to indicate that its country of origin is the country where the preform was produced.

Glass preforms are classified in heading 7002, HTSUS, while glass optical fiber is classified in subheading 9001.10.00, HTSUS. Under the current tariff shift rule in § 102.20(q) for subheading 9001.10, HTSUS, a change in origin results when a glass preform is drawn into optical fiber. To eliminate the inconsistency between the country of origin determination in HRL 560660 and the change in tariff classification rule for HTSUS subheading 9001.10, this document proposes to amend the tariff shift rule by providing for a change to subheading 9001.10 from any other subheading, except from subheading 8544.70 or glass preforms of heading 7002.

4. Rice Preparations

CBP is also proposing in this document to amend the specific change in tariff classification rule set forth in § 102.20(d) (Section IV, Chapters 16 through 24) for subheading 1904.90 of the HTSUS, which encompasses certain rice preparations. This tariff shift rule presently provides for “[a] change to subheading 1904.90 from any other heading.”

In HRL 967925 dated February 28, 2006, CBP considered whether rice is substantially transformed for purposes of the country of origin marking statute (19 U.S.C. 1304) when it was processed with 2% water, 0.4% sunflower oil, 0.2% salt and 0.4% soy lecithin, placed into cups and sealed, and thermally processed. The final rice preparation was ready for consumption after the consumer places the cup in a microwave. Customs determined that no substantial transformation of the rice results from the additional mixture with the ingredients or thermal processing as the essential character of the rice was maintained. The rice was still discernable in the final product and the product was marketed as a rice product. Therefore, it was determined that the rice preparation must be marked to indicate that its country of origin is the country or countries where the rice originated. This outcome is in accord with *National Juice Products Association v. United States*, 628 F. Supp. 978 (CIT 1986), where the court held that foreign manufacturing concentrate processed into frozen concentrated orange juice in the United States and reconstituted orange juice was not substantially transformed in the United States.

Rice is classified in heading 1006, HTSUS, and in subheading 1008.90, HTSUS, as other cereals (including wild rice), while rice preparations are classified in subheading 1904.90, HTSUS. Under the current tariff shift rule in § 102.20(d) for subheading 1904.90,

HTSUS, a change in origin results when rice is made into a rice preparation. To eliminate the inconsistency between the country of origin determination in HRL 967925 and the change in tariff classification rule for HTSUS subheading 1904.90, this document proposes to amend the tariff shift rule by providing for a change to subheading 1904.90 from any other heading, except from heading 1006 or wild rice of subheading 1008.90.

As changes in law necessitate, or when it is determined that a tariff shift rule in Part 102 does not reflect the substantial transformation standard, appropriate changes to the affected specific rules may be made.

5. Corrections to the Rules of Origin for Textile and Apparel Products

It has come to CBP's attention that the rules of origin for textile and apparel products set forth in 19 CFR § 102.21 are out of alignment with the language of the statute, 19 U.S.C. § 3592, in two instances. With regard to fabrics of chapter 59 of the Harmonized Tariff Schedule of the United States (HTSUS), the statute provides that a fabric of chapter 59 derives its origin from where "the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process." See 19 U.S.C. § 3592(b)(1)(C). However, in the case of plastic laminated fabrics of heading 5903, HTSUS, sequential application of the § 102.21 regulations allows for the origin of laminated plastic fabrics to derive from the lamination, or assembly, process and not from the fabric-formation process as intended by the statute. In order to align the regulation with the statute, CBP proposes to amend § 102.21(c)(3)(ii) by adding "fabrics of chapter 59 and" after "Except for" and before "goods of". The amended text would read "Except for fabrics of chapter 59 and goods of heading . . ." This amendment would preclude the application of the wholly assembled rule set forth in § 102.21(c)(3)(ii) to fabrics of chapter 59 and lead to application of the most important assembly or manufacturing process rule set forth in § 102.21(c)(4). As the statute makes clear that fabric formation is the origin conferring process for fabrics of chapter 59, the statute would be followed in applying § 102.21(c)(4) and determining the most important manufacturing process for purposes of determining the origin of fabrics of chapter 59.

In addition, CBP has become aware of an oversight in the drafting of the tariff shift rule for goods of heading 6212 set forth in § 102.21(e). As currently written, "brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted," of heading 6212 are grouped with goods of headings 6210 and 6211. The tariff shift rules for these goods do not provide for the possibility of knit to shape goods. The body supporting garments of heading 6212 may be knitted or cro-

ched and may be knit to shape. Therefore, in order to ensure that a knit to shape good of heading 6212 is found to derive its origin from where the good was knit to shape in accordance with 19 U.S.C. § 3592(b)(2)(A)(ii), CBP proposes to amend § 102.21(e) as follows: (1) the tariff shift rules currently designated for headings “6210 – 6212” will be designated as for headings “6210 – 6211”; (2) separate tariff shift rules will be added to § 102.21(e) for heading 6212 which will repeat the current rules applicable for that heading with the addition of language limiting application of the rules to goods which are not knit to shape and an additional tariff shift rule will be added for knit to shape goods. The proposed tariff shift rules for heading 6212 will read:

- (1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
- (2) If the good is not knit to shape and does not consist of two or more component parts, a change to heading 6212 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
- (3) If the good is knit to shape, a change to heading 6212 from any other heading, provided that the knit to shape components are knit in a single country, territory, or insular possession.

C. Relation to International Standardization Effort

The United States has been an active participant in the ongoing effort to standardize non-preferential rules of origin on the international level. This effort, under the auspices of the World Trade Organization and in cooperation with the World Customs Organization, also focuses on change in tariff classification as a means to express substantial transformation. When the undertaking began in 1994, participants intended to complete their work within three years. It is still ongoing at this time. This proposal to extend application of the Part 102 rules is in no way intended to supplant U.S. participation or positions in that effort.

III. Discussion of Proposals

This document proposes to amend Part 102 of the CBP Regulations, § 102.0 (Scope), to set forth the scope of areas for which the rules of origin set forth in Part 102 are to be used to make country of origin determinations. As a result of the proposed changes to

§ 102.0, the Part 102 rules of origin will be applicable for all purposes for which a “product of” or “country of origin” criterion is prescribed under the customs and related laws, the navigation laws of the United States, and the CBP Regulations, except for the purpose of determining whether a good other than a textile or apparel good is entitled to preferential treatment under our free trade agreements with Israel and Jordan, or unless otherwise specified³, or as otherwise provided for by statute. The term “product of” encompasses any requirement that a good be “wholly the growth, product or manufacture” of a country; substantially transformed in a country; a new and different product or a new or different article of commerce as a result of processing performed in a country; or the growth, product or manufacture of a country. In addition, § 102.0 is proposed to be amended by removing the specific reference to the U.S. - Bahrain Free Trade Agreement, as this reference is no longer necessary as a result of the proposed changes described above.

Consistent with the proposed changes to § 102.0 described above, this document also proposes to add a cross-reference to the definition of “wholly obtained or produced in a country” set forth in § 102.1(g) to all provisions in the CBP Regulations where the phrase “wholly the growth, product or manufacture” or a similar phrase is used for origin purposes, except where otherwise defined by statute (e.g., U.S.-Morocco and U.S.-Bahrain Free Trade Agreements). Similarly, CBP proposes to add a cross-reference to the rules of origin in Part 102 to all provisions in the CBP Regulations in which the phrases “country of origin,” “substantial transformation,” a “new and different product,” and a “new and different article of commerce” are used for origin purposes. These proposed amendments affect Parts 4, 7, 10, 102, 134, and 177, CBP Regulations (19 CFR Parts 4, 7, 10, 102, 134, and 177).

As a result of the proposed amendments set forth in this document, the Part 102 rules would be used to determine whether a good meets the “product of” criterion for receiving duty preference under General Note (“GN”) 3(a)(iv), HTSUS (U.S. insular possessions); GN 3(a)(v), HTSUS (West Bank, Gaza Strip or qualifying industrial zones); GN 4(b) and (c), HTSUS (Generalized System of Preferences (“GSP”)); GN 7(b), HTSUS (Caribbean Basin Economic Recovery Act (“CBERA”)); GN 10(b), HTSUS (Freely Associated States); GN 11(b), HTSUS (Andean Trade Preferences Act (“ATPA”)); GN 16(b), HTSUS (African Growth and Opportunity Act (“AGOA”)); GN 27(b)(ii),

³ Origin-related scope determinations made by the administering authority for trade remedy purposes (Department of Commerce) may differ from the origin determinations made by CBP for customs purposes. For purposes of administering the trade remedy laws, the origin-related scope determinations made by the administering authority, not CBP, are controlling. However, the origin-related scope determination of the administering authority is for trade remedy purposes only; it does not alter CBP’s origin determination for customs purposes unrelated to trade remedies.

HTSUS (U.S.-Morocco Free Trade Agreement); and GN 30(b)(ii), HTSUS (U.S.-Bahrain Free Trade Agreement). The applicable value-content requirements and any other rules under these programs, however, must still be met in order for a good to qualify for the duty preference.

The proposed amendments to Part 134 concerning country of origin marking also propose that the Part 102 rules would be used to determine both the country of origin of imported foreign articles and whether imported articles that are further processed become goods of the United States for purposes of identifying the goods' "ultimate purchaser."

In addition, this document proposes to change the specific tariff shift rules set forth in 19 CFR 102.20 that apply to printed greeting cards classified in heading 4909 of the HTSUS, fittings and flanges classified in heading 7307, HTSUS, glass optical fiber classified in subheading 9001.10, HTSUS, and rice preparations classified in subheading 1904.90, HTSUS.

Finally, this document proposes amendments to the textile regulations set forth in § 102.21 in order to more closely align the regulations with the language of the statute, 19 U.S.C. 3592, and also to remedy an oversight in the drafting of the tariff shift rule for goods of heading 6212 set forth in § 102.21(e).

IV. The Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities because the amendments reflect recent judicial guidance and standardize country of origin marking requirements for NAFTA and non-NAFTA trade. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

V. Signing Authority

This document is being issued by CBP 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 CBP revenue functions.

LIST OF SUBJECTS

19 CFR Part 4

Administrative practice and procedure, Cargo vessels, Coastwise trade, Freight, Imports, Landing, Merchandise, Shipping, Vessels.

19 CFR Part 7

Customs duties and inspection, Imports, Insular possessions, Reporting and recordkeeping requirements.

19 CFR Part 10

American goods, Assembly, Customs duties and inspection, Entry, Imports, Preference Programs, Reporting and recordkeeping requirements, Shipments, Trade agreements.

19 CFR Part 102

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

19 CFR Part 134

Canada, Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Mexico, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 177

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Rulings, Trade Agreements.

PROPOSED AMENDMENTS TO THE REGULATIONS

Accordingly, CBP proposes to amend Parts 4, 7, 10, 12, 102, 134, and 177 of the CBP Regulations (19 CFR Parts 4, 7, 10, 102, 134, and 177) as set forth below:

PART 4 – VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. App. 3, 91.

* * * * *

2. Section 4.80b is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 4.80b Coastwise transportation of merchandise.

(a) * * * For purposes of this section, merchandise is manufactured or processed into a new and different product when it has undergone a change in country of origin under the provisions of §§ 102.1 through 102.21 of this chapter.

* * * * *

PART 7 – CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANOMO BAY NAVAL STATION

3. The authority citation for Part 7 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

4. Section 7.3 is amended by revising paragraph (b) to read as follows:

§ 7.3 Duty-free treatment of goods imported from insular possessions of the United States other than Puerto Rico.

* * * * *

(b) Origin of goods. (1) For purposes of this section, and subject to paragraph (b)(2) of this section, goods shall be considered to be the growth, product of, or manufactured or produced in, an insular possession if:

(i) The goods are wholly the growth or product of the insular possession; or

(ii) The goods became a new and different article of commerce as a result of production or manufacture performed in the insular possession.

(2) For purposes of this section, the expression “wholly the growth or product” refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter. For purposes of paragraph (b) of this section, a “new and different article of commerce” exists when the country of origin of a good which is produced in an insular possession from foreign materials is determined to be that insular possession under §§ 102.1 through 102.21 of this chapter.

* * * * *

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

5. 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), 1321, 1481, 1484, 1498, 1508, 1623, 1624. 3314;

* * * * *

6. Section 10.12 is amended by revising the last sentence of paragraph (e) to read as follows:

§ 10.12 Definitions.

* * * * *

(e) * * * If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed as provided in § 10.14(b) of this part.

7. Section 10.14 is amended by revising paragraph (b) to read as follows:

§ 10.14 Fabricated components subject to the exemption.

* * * * *

(b) Substantial transformation of foreign-made articles or materials. Foreign made articles or materials will become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. For purposes of this section and § 10.12(e) of this part, substantial transformation occurs when the country of origin of a good which is produced in the United States from foreign materials is determined to be the United States under §§ 102.1 through 102.21 of this chapter.

Example 1. Unfinished automotive crankshaft forgings, classified in subheading 8483.10, HTSUS, are imported into the United States for further processing. In the United States, the importer machines, drills, and heat treats the forging to produce a finished crankshaft. The finished article also is classified in subheading 8483.10, HTSUS. Under § 102.20 of this chapter, the applicable tariff shift rule for goods classified in subheading 8483.10 requires a change to that subheading from any other subheading. The further processing does not result in the article becoming a product of the United States because the requisite tariff shift is not satisfied. By application of the residual rules in § 102.11, the origin of the finished crankshaft is determined to be the country of origin of the imported forging.

Example 2. Optical fiber, classified in subheading 9001.10, HTSUS, is imported into the United States. After importation, the U.S. importer sheaths and insulates the individual optical fibers in color-coated plastic. The further-processed optical fiber is classified in 8544.70, HTSUS. The applicable tariff shift rule in § 102.20 of this chapter for articles classified within subheadings 8544.11 through 8544.70, HTSUS, requires a change in tariff classification from any other subheading, including a subheading within that group, except when the tariff shift results from a simple assembly. Because the further processing results in a change from a good of subheading 9001.10 to a good of subheading 8544.70 (by more than a simple assembly), the tariff shift requirement is satisfied and the finished optical fibers are determined to be products of the United States.

8. Section 10.171 is amended by adding a new paragraph (c) to read as follows:

§ 10.171 General.

* * * * *

(c) Wholly the growth, product, or manufacture defined. For purposes of §§ 10.171 through 10.178, the expression “wholly the growth, product, or manufacture” refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

9. Section 10.176 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

§ 10.176 Country of origin criteria.

(a) * * *

(1) * * * For purposes of this section, a “new and different article of commerce” exists when the country of origin of a good which is produced in a beneficiary developing country from foreign materials is determined to be that beneficiary developing country under §§ 102.1 through 102.21 of this chapter.

* * * * *

10. Section 10.191 is amended by revising paragraph (b)(3) to read as follows:

§ 10.191 General.

* * * * *

(b) * * *

(3) Wholly the growth, product, or manufacture. For purposes of § 10.191 through § 10.199, the expression “wholly the growth, product, or manufacture” refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

* * * * *

11. Section 10.195 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

§ 10.195 Country of origin criteria.

(a) * * *

(1) * * * For purposes of this section, a “new and different article of commerce” exists when the country of origin of a good which is produced in a beneficiary country from foreign materials is determined to be that beneficiary country under §§ 102.1 through 102.21 of this chapter.

* * * * *

12. Section 10.199 is amended by adding a sentence at the end of paragraph (e)(1) to read as follows:

§ 10.199 Duty-free entry for certain beverages produced in Canada from Caribbean rum.

* * * * *

(e) * * *

(1) * * * For purposes of this section, the expression “wholly the growth, product, or manufacture” refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter, and a “new and different article of commerce” exists when the country of origin of a good which is produced in a beneficiary country or the U.S. Virgin Islands from foreign materials is determined to be that beneficiary country or the U.S. Virgin Islands under §§ 102.1 through 102.20 of this chapter.

* * * * *

13. Section 10.202 is amended by revising paragraph (d) to read as follows:

§ 10.202 Definitions.

* * * * *

(d) Wholly the growth, product, or manufacture. The expression “wholly the growth, product, or manufacture” refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

14. Section 10.205 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 10.205 Country of origin criteria.

* * * * *

(b) New and different article of commerce. For purposes of this section, a “new and different article of commerce” exists when the country of origin of a good which is produced in a beneficiary country from foreign materials is determined to be that beneficiary country under the provisions of §§ 102.1 through 102.21 of this chapter.

* * * * *

15. Section 10.252 is amended by adding a new definition in alphabetical order to read as follows:

§ 10.252 Definitions.

* * * * *

Wholly the growth, product, or manufacture. “Wholly the growth, product, or manufacture” refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

16. Section 10.253 is amended by redesignating paragraph (c)(2) as paragraph (c)(3) and by adding a new paragraph (c)(2) to read as follows:

§ 10.253 Articles eligible for preferential treatment.

* * * * *

(c) * * *

(2) New and different article of commerce. For purposes of this section, a “new and different article of commerce” exists when the country of origin of a good which is produced in an ATPDEA beneficiary country from foreign materials is determined to be that beneficiary country under the provisions of §§ 102.1 through 102.21 of this chapter.

* * * * *

17. Section 10.769 is amended by revising paragraph (i) to read as follows:

§ 10.769 Definitions.

* * * * *

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

* * * * *

PART 102 – RULES OF ORIGIN

18. The authority citation for Part 102 continues to read as follows:

Authority: 7 U.S.C. 1854, 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

19. Section 102.0 is revised to read as follows:

§ 102.0 Scope.

This part sets forth rules for determining the country of origin of imported goods for purposes of the customs and related laws and the navigation laws of the United States. Except for the purpose of determining whether goods are entitled to preferential treatment under the U.S.-Israel or U.S.-Jordan FTAs, or unless otherwise speci-

fied⁴, or as otherwise provided for by statute, the rules set forth in §§ 102.1 through 102.20 apply for all such purposes where a requirement exists to determine the “country of origin” of a good or whether a good is: wholly the growth, product or manufacture of a country; substantially transformed in a country; a new and different product or a new or different article of commerce as a result of processing performed in a country; or the growth, product or manufacture of a country. The rules in §§ 102.1 through 102.20 also apply for determining the country of origin of imported goods for the purposes specified under Annex 311 of the North American Free Trade Agreement (“NAFTA”). The rules for determining the country of origin of textile and apparel products set forth in § 102.21 and § 102.22 also apply for the other purposes stated in those sections. Sections 102.23 through 102.25 set forth certain procedural requirements relating to the importation of apparel products.

20. In the table in § 102.20:

A. Paragraph (d), titled “Section IV: Chapters 16 through 24,” is amended by revising the entry for 1904.90;

B. Paragraph (j), titled “Section X: Chapters 47 through 49,” is amended by removing the entry for 4901 – 4911, and by adding three new entries for 4901 – 4908, 4909, and 4910 – 4911;

C. Paragraph (n), titled “Section XV: Chapters 72 through 83,” is amended by revising the entry for 7301 – 7307; and

D. Paragraph (q), titled “Section XVIII: Chapters 90 through 92,” is amended by revising the entry for 9001.10.

The additions and revisions read as follows:

§ 102.20 Specific rules by tariff classification.

* * * * *

| HTSUS | Tariff shift and/or other requirements |
|------------|---|
| * * * | * * * * * |
| (d) | Section IV: Chapters 16 through 24 |
| * * * | * * * * * |
| 1904.90 | A change to subheading 1904.90 from any other heading, except from heading 1006 or wild rice of subheading 1008.90. |
| * * * | * * * * * |

⁴Origin-related scope determinations made by the administering authority for trade remedy purposes (Department of Commerce) may differ from the origin determinations made by CBP for customs purposes. For purposes of administering the trade remedy laws, the origin-related scope determinations made by the administering authority, not CBP, are controlling. However, the origin-related scope determination of the administering authority is for trade remedy purposes only; it does not alter CBP’s origin determination for customs purposes unrelated to trade remedies.

| HTSUS | Tariff shift and/or other requirements |
|--------------|--|
| (j) | Section X: Chapters 47 through 49 |
| *** | ***** |
| 4901–4908 | A change to heading 4901 through 4908 from any other heading, including another heading within that group. |
| 4909 | A change to heading 4909 from any other heading, except from heading 4911 when the change is a result of adding text. |
| 4910–4911 | A change to heading 4910 through 4911 from any other heading, including another heading within that group. |
| *** | ***** |
| (n) | Section XV: Chapters 72 through 83 |
| *** | ***** |
| 7301–7307 | A change to heading 7301 through 7307 from any other heading, including another heading within that group, or a change within heading 7307 from fitting forgings or flange forgings to fittings or flanges made ready for commercial use by: |
| | (a) at least one of the following processes: |
| | (1) bevelling; |
| | (2) threading of the bore; |
| | (3) center or step boring; or |
| | (4) machining the gasket face; and |
| | (b) at least two of the following processes: |
| | (1) heat treating; |
| | (2) recoining or resizing; |
| | (3) taper boring; |
| | (4) machining ends or surfaces other than a gasket face; |
| | (5) drilling bolt holes; or |
| | (6) burring or shot blasting. |
| *** | ***** |
| (q) | Section XVIII: Chapters 90 through 92 |
| 9001.10 | A change to subheading 9001.10 from any other subheading, except from subheading 8544.70 or glass preforms of heading 7002. |
| *** | ***** |

21. Section 102.21 is amended by revising paragraph (c)(3)(ii) and by removing the entry for 6210 – 6212 and adding new entries for 6210 – 6211 and 6212 in the table in paragraph (e)(1) to read as follows:

§ 102.21 Textile and apparel products.

* * * * *

(c) * * *

(3) * * *

(ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

* * * * *

(e) * * *

(1) * * *

| HTSUS | Tariff shift and/or other requirements |
|-----------|--|
| * * * | * * * * * |
| 6210–6211 | (1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6211 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. |
| | (2) If the good does not consist of two or more component parts, a change to heading 6210 through 6211 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process. |
| 6212 | (1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. |

| HTSUS | Tariff shift and/or other requirements |
|-------|---|
| | (2) If the good is not knit to shape and does not consist of two or more component parts, a change to heading 6212 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process. |
| | (3) If the good is knit to shape, a change to heading 6212 from any other heading, provided that the knit to shape components are knit in a single country, territory, or insular possession. |
| * * * | * * * * * |

PART 134 – COUNTRY OF ORIGIN MARKING

22. The authority citation for Part 134 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

23. Section 134.1 is amended by revising paragraphs (b), (d)(1) and (d)(2) to read as follows:

§ 134.1 Definitions.

* * * * *

(b) *Country of origin.* “Country of origin” means the country of manufacture, production, or growth of any article of foreign origin entering the United States as determined under §§ 102.1 through 102.21 of this chapter.

* * * * *

(d) * * *

(1) If an imported article will be further processed in the United States, the processor will be the “ultimate purchaser” if the country of origin of the processed good is determined to be the United States under §§ 102.1 through 102.21 of this chapter.

(2) If the country of origin of the processed good is not determined to be the United States under §§ 102.1 through 102.21 of this chapter, the consumer or user of the article, who obtains the article after the processing, will be regarded as the “ultimate purchaser.”

* * * * *

24. Section 134.35 is revised to read as follows:

§ 134.35 Articles effecting a change in country of origin.

If an imported article will be used in further processing in the United States, the processor will be considered the ultimate purchaser if the processed good is determined to be a good of the United States under §§ 102.1 through 102.21 of this chapter. In such a case, the imported article is excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D) and § 134.32(d) of this part, provided the outermost container in which it is imported will reasonably indicate the country of origin of the article to the ultimate purchaser.

PART 177—ADMINISTRATIVE RULINGS

25. The authority citation for Part 177 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625.

26. Section 177.22 is amended by revising paragraph (a) to read as follows:

§ 177.22 Definitions.

(a) Country of origin. (1) For purposes of this subpart, an article is a product of a country or instrumentality only if:

(i) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(ii) In the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce.

(2) The term “instrumentality” will not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community. For purposes of this section, the expression “wholly the growth, product, or manufacture” refers to articles wholly obtained or produced within the meaning of § 102.1(g) of this chapter, and a substantial transformation into a “new and different article of commerce” occurs when the country of origin of an article which is produced in a country or instrumentality from foreign materials is determined to be that country or instrumentality under §§ 102.1 through 102.21 of this chapter.

* * * * *

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

Approved: July 21, 2008

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

[Published in the Federal Register, July 25, 2008 (73 FR 43385)]

Docket No. USCBP-2008-0074**Notice of Meeting of The Departmental Advisory Committee
on Commercial Operations of Customs and Border
Protection and Related Homeland Security Functions
(COAC)**

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

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (popularly known as “COAC”) will meet on August 7, 2008 in Seattle, Washington. The meeting will be open to the public.

DATE: COAC will meet Thursday, August 7th from 8 a.m. to 12 p.m. Please note that the meeting may close early if the committee has completed its business. If you plan to attend, please contact Ms. Wanda Tate on or before Friday, August 1, 2008.

ADDRESSES: The meeting will be held at the Museum of Flight, 9404 East Marginal Way South, Skyline Room, Seattle, Washington 98108-4097.

Written material and comments should reach the contact person listed below by July 30, 2008. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by July 30, 2008. Comments must be identified by Docket No. USCBP-2008-0074 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** traderelations@dhs.gov. Include the docket number in the subject line of the message.
- **Fax:** 202-344-2064.
- **Mail:** Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Room 8.5C, Washington, DC 20229.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Ave., NW., Room 8.5C, Washington, DC 20229; traderelations@dhs.gov; telephone 202-344-1440; facsimile 202-344-2064.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C., app.), DHS hereby announces a meeting of the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The seventh meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. World Customs Organization & Mutual Recognition Status.
2. C-TPAT Programs (Customs-Trade Partnership Against Terrorism).
3. ITDS (International Trade Data Systems Status).
4. Import Safety Initiatives.
5. Advance Trade Data (“10+2”).
6. Secure Freight Initiative.
7. Agriculture Program Update.
8. Trade Facilitation and Compliance Issues.
9. Intellectual Property Rights Enforcement Status.
10. Customs Bond Subcommittee.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Museum of Flight must check-in with CBP officials at the registration desk outside the Skyline Room. Since seating is limited, all persons attending this meeting should provide no-

tice, preferably by close of business Friday, August 1, 2008, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-2064.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: July 14, 2008

MICHAEL C. MULLEN,
Assistant Commissioner,
Office of International Affairs and Trade Relations,
U.S. Customs and Border Protection.

[Published in the Federal Register, July 18, 2008 (73 FR 41368)]

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 109-B Freedom Boulevard, Yorktown, VA 23692, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on May 08, 2008. The next triennial inspection date will be scheduled for May 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: July 15, 2008

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, July 22, 2008 (73 FR 42591)]

**ACCREDITATION AND APPROVAL OF CAMIN CARGO
CONTROL, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Camin Cargo Control, Inc., 1301 Metropolitan Ave., Thorofare, NJ 08086, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on May

22, 2008. The next triennial inspection date will be scheduled for May 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: July 15, 2008

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, July 22, 2008 (73 FR 42591)]

Notice of Cancellation of Customs Broker Licenses Due to Death of
the License Holder

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

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

| <u>Name</u> | <u>License #</u> | <u>Port Name</u> |
|---------------------|------------------|------------------|
| Marjorie A. Kilburn | 06387 | Houston |
| Richard E. Lund | 07572 | Los Angeles |
| Chris T. Banis | 05247 | San Francisco |
| Larry Germi | 07842 | Miami |

DATED: July 11, 2008

DANIEL BALDWIN,
Assistant Commissioner,
Office of International Trade.

[Published in the Federal Register, July 21, 2008 (73 FR 42363)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, July 23, 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.

Myles B. Harmon for SANDRA L. BELL,
*Executive Director,
Regulations and Rulings,
Office of International Trade.*

REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF CERTAIN FOOTWEAR

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

ACTION: Notice of revocation of a ruling letter and treatment relating to tariff classification of certain footwear identified as “floral thong sandals”.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of certain footwear under the Harmonized Tariff Schedule of the United States (HTSUS). CBP hereby revokes any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 42, No. 26, on June 18, 2008. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 5, 2008.

FOR FURTHER INFORMATION CONTACT: Greg Connor, Tariff Classification and Marking Branch: (202) 572–8749

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 42, No. 26, on June 18, 2008, proposing to revoke New York Ruling Letter (NY) N006001, dated February 16, 2007, which classified the subject merchandise under in heading 6402, HTSUS, and specifically in subheading 6402.99.4060 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)(2007). No comments were received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may

raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N006001 to reflect the proper tariff classification of this merchandise under heading 6402, HTSUS, specifically in subheading 6402.99.3165, HTSUSA, which provides for, in pertinent part: “[o]ther footwear with uppers of rubber or plastics: [o]ther footwear: [o]ther: [o]ther: [h]aving uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics . . . : [o]ther: [o]ther . . . [o]ther: [f]or women”, pursuant to the analysis in Headquarters Ruling Letter (HQ) H019060, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

DATED: July 18, 2008

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

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H019060
July 18, 2008
CLA-2 OT:RR:CTF:TCM H019060 GC
CATEGORY: Classification
TARIFF NO.: 6402.99.3165 HTSUSA

MS. BARBARA Y. WIERBICKI, ESQ.
TOMPKINS AND DAVIDSON, LLP
5 Hanover Square, 15th Floor
New York, New York 10004

RE: Tariff classification of “floral thong sandal”; reconsideration of NY N006001

DEAR MS. WIERBICKI:

In New York Ruling Letter (NY) N006001, National Commodity Specialist Division, Customs and Border Protection (CBP), issued to your client, Avon Products, Inc. on February 16, 2007, a certain “floral thong sandal” (sandal) was classified under subheading 6402.99.4060 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, in pertinent part: “[o]ther footwear with uppers of rubber or plastics: Other footwear: Other: Other: Footwear with open toes or open heels . . . : Other: For women.” We have since reviewed NY N006001 and find it to be in error.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on June 18, 2008, in Volume 42, Number 26, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

FACTS:

The sandal discussed in N006001 is identified by style number PP 359887. It is a women's open-toe, open-heel, toe-thong fashion sandal with a ½ - inch high plastic heel and a rubber/plastic sole. The "Y" configured strap-like vamp includes numerous decorative accessories or reinforcements. These accessories or reinforcements consist of eight small daisy-like flowers with plastic material petals and ¼ - inch diameter, round shiny metal centers. There are also six more small round metal stud-like accessories or reinforcements arranged along the sides of the upper and the sandal also has a heel strap closure with a small metal buckle.

In issuing NY N006001, it was determined by visual estimation that the metal accessories and reinforcements account for more than 10% of the external surface area of the sandal upper. Subsequent laboratory analysis has indicated that following constitutes the specific breakdown of the external surface area upper: 93.6 percent rubber/plastic and 6.4 percent metal (buckle plus fourteen rivets).

The submitted sample is not marked with a country of origin. However, you have stated that your client will mark the merchandise in accordance with the requirements of 19 U.S.C. §1304 upon importation. As such, this letter will discuss only the issue of tariff classification of the subject sandal.

ISSUE:

What is the proper classification under the HTSUS for the subject merchandise?

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.

For classification at the subheading level, GRI 6 is implicated. It states:

For legal purposes, the classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The HTSUS provisions under consideration are as follows:

6402 Other footwear with outer soles and uppers of rubber or plastics:

* * *

Other footwear:

* * *

6402.99 Other:

* * *

Other:

Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):

* * *

Other:

* * *

6402.99.31 Other,

* * *

6402.99.40 Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the fore-going except footwear of subheading 6402.99.20 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper . . .

As indicated by the subheading text above (at the fifth indentation) note 4 to chapter 64, HTSUS, is implicated here. Note 4(a), which pertains to the composition of the upper, states, in pertinent part:

The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments.

Consequently, in order to satisfy the terms of the subheading, which references note 4, the subject merchandise must: (1) have uppers of which over 90 percent of the surface area is rubber or plastics; (2) not possess a foxing or foxing-like band applied or molded at the sole and overlapping the upper; and (3) not be designed to be worn over, or in lieu of, other footwear as protection against water, oil, grease or chemicals or cold or inclement weather.

The principal issue in this case concerns whether or not the uppers consist of more than 90 percent rubber or plastics. The laboratory analysis conducted after NY N006001 was issued confirms that the upper of the subject sandal is indeed composed of over 90 percent rubber or plastics. As a conse-

quence, the sandal is most specifically described in subheading 6402.99.31, HTSUS, as opposed to 6402.99.40, HTSUS.

HOLDING:

By application of GRI 6 and GRI 1, the “floral thong sandal” (item number PP359887) is classifiable under heading 6402, HTSUS, and specifically provided for in subheading 6402.99.3165, HTSUSA, which provides for, in pertinent part: “[o]ther footwear with uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics . . . : Other: Other . . . Other: For women.” The column one, general rate of duty is 6 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N006001, dated February 16, 2007 is hereby REVOKED.

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

GENERAL NOTICE

19 CFR PART 177

**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE CLASSIFICATION OF A USB CABLE AND AN
ETHERNET CABLE**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the classification of a USB cable and an Ethernet cable.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a USB cable and an Ethernet cable. Similarly, CBP 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 September 5, 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., Mint Annex, 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 Joseph Clark, Trade and Commercial Regulations Branch, at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 572-8828.

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 to 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 one ruling letter relating to the tariff classification of a USB cable and an Ethernet cable. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N007536, dated March 6, 2007 (Attachment A), this notice covers any rulings 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) 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 with 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 N007536, CBP classified a USB cable and an Ethernet cable in subheading 8544.42.9000, HTSUSA, which provides for: "Insulated (including enameled or anodized) wire . . . and other insulated electric conductors, whether or not fitted with connectors . . . : Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other." Based on our recent review of NY N007536, we have determined that the classification set forth for the cables in that ruling is incorrect. It is now CBP's position that the subject cables are properly classified in subheading 8544.42.2000, HTSUSA, which provides for: "Insulated (including enameled or anodized) wire . . . and other insulated electric conductors, whether or not fitted with connectors . . . : Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Of a kind used for telecommunications." Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke NY N007536 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H029719 (Attachment B). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 18, 2008

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

[ATTACHMENT A]

NY N007536
March 6, 2007
CLA-2-85:RR:NC:N1:112
CATEGORY: Classification
TARIFF NO.: 8544.42.9000

DENNIS MORSE
LICENSED CUSTOMS BROKER
BDP INTERNATIONAL, INC.
2721 Walker Avenue N.W.
Grand Rapids, MI 49504

RE: The tariff classification of "USB Cable" (Item # 774360) and "Ethernet Cable" (Item # 700043) from China.

DEAR MR. MORSE:

In your letter dated February 17, 2007, you requested a tariff classification ruling on behalf of your client, Meijer Distribution.

The first item in question is a six-foot long USB computer cable. This cable is fitted with a type "A", male, USB connector on one end and a type "B", male, USB connector on the opposite end. This cable is used to connect a Personal Computer to a variety of USB devices, allowing for the transfer of data or music between the two.

The second item in question is a twenty-five foot Ethernet computer cable. This cable is fitted with modular "Ethernet" connectors on each end. It's used to connect a Personal Computer to gaming systems, the Internet and various other computing devices.

Regarding item # 774360, you have proposed classification under sub-heading 8471.80.9000 of the Harmonized Tariff Schedule of the United States (HTSUS) which provides for "Automatic data processing machines and units thereof . . . : Other units of automatic data processing machines: Other: Other". You cite ruling NY L87277. It is the opinion of this office that the merchandise described in NY L87277 has a dual use. While it is insulated wire/cable fitted with connectors, it has an additional feature. The merchandise described in NY L87277 contains additional electronics and connectors that allow this device to act as a charging port for a cell phone. This additional function makes this merchandise neither identical nor similar to item # 774360.

Classification of goods in the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRIs). GRI 1. states, ". . . classification shall be determined according to the terms of the headings . . .". Heading 8544 provides for "Insulated wire, cable and other insulated electric conductors, whether or not fitted with connectors . . .".

General Note 3. (h) (vi) to the HTSUS states, ". . . a reference to "headings" encompasses subheadings indented thereunder". Subheading 8544.42 provides for ". . . electric conductors, for a voltage not exceeding 1,000 V".

The applicable subheading for the "USB Cable" (Item # 774360) and the "Ethernet Cable" (Item # 700043) will be 8544.42.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Insulated wire, cable and other insulated electric conductors, whether or not fitted with connectors . . . : Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Other. The rate of duty will be 2.6%.

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 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 Steven Pollichino at 646-733-3008.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H029719
CLA-2 OT:RR:CTF:TCM H029719 HkP
CATEGORY: Classification
TARIFF NO.: 8544.42.2000

MR. DENNIS MORSE
BDP INTERNATIONAL, INC.
2721 Walker Avenue, N.W.
Grand Rapids, MI 49504

RE: Revocation of NY N007536; USB cable (item no. 774360); Ethernet cable (item no. 700043)

DEAR MR. MORSE:

This is in reference to New York Ruling Letter (“NY”) N007536, issued to you on March 6, 2007, on behalf of your client Miejer Distribution. At issue in that ruling was the classification of a USB cable and of an Ethernet cable under the Harmonized Tariff Schedule of the United States (HTSUS). U.S. Customs and Border Protection (“CBP”) classified this merchandise under subheading 8544.42.9000, HTSUSA, as, “other electric conductors for a voltage not exceeding 1,000 V, fitted with connectors, other.” We have reviewed NY N007536 and found it to be incorrect. For the reasons set forth in this ruling, we hereby revoke NY N007536.

FACTS:

The merchandise at issue is described in NY N007536 as follows:

The first item in question is a six-foot long USB computer cable. This cable is fitted with a type “A”, male, USB connector on one end and a type “B”, male, USB connector on the opposite end. This cable is used to connect a Personal Computer to a variety of USB devices, allowing for the transfer of data or music between the two.

The second item in question is a twenty-five foot Ethernet computer cable. This cable is fitted with modular “Ethernet” connectors on each end. It’s used to connect a Personal Computer to gaming systems, the Internet and various other computing devices.

ISSUE:

What is the correct classification of the USB cable and the Ethernet cable 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:

8544 Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:

* * *

Other electric conductors, for a voltage not exceeding 1,000 V:

8544.42 Fitted with connectors:

* * *

Other:

8544.42.2000 Of a kind used for telecommunications

8544.42.9000 Other

We do not dispute that the cables are provided for under heading 8544, HTSUS. However, we now believe that their classification at the eight-digit level was incorrect. CBP previously classified the USB cable and the Ethernet cable at issue in subheading 8544.42.9000, HTSUSA, as other electric conductors, “other.” After reviewing the nature of the cables, we now find that their correct classification is subheading 8544.42.2000, HTSUSA, which provides for electric conductors “of a kind used for telecommunication.” Our position is based on the fact that USB and Ethernet cables are used for the two-way transfer of data between a personal computer and various other devices. CBP has previously classified a SCSI II (“skuzzy”) cable with connectors, used to connect a PC to various other devices, in subheading 8544.41.4000, HTSUSA. Pursuant to the 2007 changes to the HTSUS, the products of subheading 8544.41, HTSUS (2006), have been transferred to subheading 8544.42, HTSUS (2008).

HOLDING:

By application of GRI 1, the USB cable and the Ethernet cable at issue are classified under heading 8544, HTSUS. They are specifically provided for in subheading 8544.42.2000, HTSUSA, which provides for: Insulated . . . wire, cable . . . and other insulated electric conductors, whether or not fitted with connectors . . . : Other electric conductors, for a voltage not exceeding 1,000

V: Fitted with connectors: Other: Of a kind used for telecommunications.“
The 2008 column one, general rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY N007536, dated March 6, 2007, is hereby revoked.

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

GENERAL NOTICE

19 CFR PART 177

MODIFICATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO A CHANGE IN CONDITION OF
LIQUID FUNGICIDE FOR PURPOSES OF 19 U.S.C. § 3333

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

ACTION: Notice of modification of a ruling letter and revocation of
treatment relating to a change in condition of liquid fungicide for
purposes of 19 U.S.C. § 3333.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19
U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs
Modernization) of the North American Free Trade Agreement Imple-
mentation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises
interested parties that CBP intends to modify HRL 231152 (June 13,
2006), (Attachment A), which holds that the addition of propylene
glycol, to concentrated fungicide base changed the “flowability“ of
the mixture and thus was a change in condition for purposes of 19
U.S.C. § 3333, and to revoke any treatment previously accorded by
CBP to substantially identical transactions. Notice of the proposed
action was published in the *Customs Bulletin* on June 11, 2008. No
comments were received in response to this notice.

EFFECTIVE DATE: This modification and revocation is effective
for merchandise entered or withdrawn from warehouse for consump-
tion on or after October 5, 2008.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, En-
try Processing and Duty Refund Branch, (202) 572–8782.

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 CBP 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 CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on June 11, 2008, in the *Customs Bulletin* Vol. 42, No. 25, proposing to modify HRL 231152, dated June 13, 2006. This ruling held that because flowability is a characteristic not found in liquid fungicide before the addition of propylene glycol, the addition of propylene glycol imparts the characteristic of flowability to the liquid fungicide thereby changing the condition of the fungicide for purposes of 19 U.S.C. § 3333. No comments were received in response to this notice.

As stated in the proposed notice, this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during 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 is-

sues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this final notice.

HRL 231152 was issued in response to a request for a ruling on whether the addition of certain ingredients to a liquid concentrated fungicide, Azoxystrobin Millbase, "changed the condition" of the concentrate for purposes of 19 U.S.C. § 3333 and drawback per 19 U.S.C. § 1313(j)(1) upon exportation to Canada. In HRL 231152 we held that "the addition of propylene glycol to the imported liquid fungicide materially alters the liquid fungicide to the extent that it is not in the same condition upon exportation to Canada. Therefore, the exported liquid fungicide is not eligible for drawback under 19 U.S.C. § 1313(j)(1)." The facts under consideration were these. Azoxystrobin Millbase concentrate was proposed to be imported into the U.S. and admitted to a foreign trade zone. The concentrate was made up of water, a dispersant / surfactant, a preservative / antibacterial agent, an antifoaming agent and the active ingredient. Within the zone propylene glycol is added. In addition, a biocide is added and a stabilizer, i.e., bentonite. The fungicide was to be tested, packaged and labeled in the zone, then exported to Canada.

In HRL 231152 CBP determined that propylene glycol was added to the imported merchandise in the U.S. to permit the fungicide to be used in cold conditions and, for that reason, the exported fungicide was not in the same condition as when imported into the U.S. Because this determination as to the purpose of the propylene glycol was sufficient to support the conclusion that the product was changed in condition for the purpose of applying the NAFTA limitation, CBP did not consider the effect of the other substances that were added along with the propylene glycol in the FTZ. The ruling requester asked CBP to reconsider its determination because the purpose of the propylene glycol was to prevent freezing during transportation and storage rather than to permit use of the fungicide in cold conditions. While our conclusion that the processing in the U.S. resulted in the exported fungicide being changed in condition under the NAFTA limitations for drawback and duty-deferral programs would remain the same, we propose to modify 231152 to reflect consideration of the effect of the additional substances on the imported fungicide and to clarify the basis for our determination that the fungicide was changed in condition and was therefore subject to the NAFTA limitations.

The statement made in HRL 231152, that "Given that flowability is a characteristic not found in the liquid fungicide before the addition of propylene glycol," was based on our conclusion that the propylene glycol was added to enable the fungicide to be used in cold weather. However, upon reconsideration of the facts in HRL 231152, we have concluded that the addition of the other ingredients to the Azoxystrobin Millbase changed the condition so that the exported

fungicide was subject to the NAFTA-imposed limitations on drawback. Accordingly, we are issuing HRL W231514 (Attachment B), to modify HRL 231152 to reflect that addition to the concentrate of “flowability” is not the basis for the conclusion that the fungicide is changed in condition, though that conclusion, that the fungicide is, in fact, changed in condition, is not altered.

The addition of the three ingredients in the zone, propylene glycol, the biocide and the bentonite, does not fall into any of the exemplars in § 181.45(b)(1) and also materially alters the characteristic of the concentrate. Thus, the addition of the three ingredients is not “mere dilution,” which, when given the common meaning, means “nothing more than” “making weaker or less concentrated.” The concentration of the active ingredient is reduced from 50% to about 23% by the addition of the other ingredients, but the addition of the ingredients to the concentrate enables the active ingredient to remain in suspension so that further dilution and crop application, i.e., spraying is easier. “In order for the [end] product to be used in spray equipment, the most common means of applying the fungicide, the ingredients added after importation are necessary” because without the ingredients added in the FTZ, the active ingredient would not remain in suspension making further dilution and spraying difficult. Thus, the “mere dilution” assertion is contradicted, i.e., something in addition to a reduction in concentration happens to the Azoxystrobin Millbase. In addition, the manufacturer, Syngenta, treats the concentrate differently than it treats the finished fungicide. Syngenta refers to the concentrate as “Azoxystrobin Millbase,” product number A13367D and the exported finished fungicide as “Abound Flowable,” product number A12705A. The Azoxystrobin Millbase is imported in 1000 liter tanks but the fungicide is packaged into different containers with different labeling. The Azoxystrobin Millbase concentrate is not used in the U.S. but the Abound Flowable is sold and used in the U.S.

The exported fungicide is not in the same condition within the meaning § 3333 and § 181.45 as the imported Azoxystrobin Millbase because the addition of the ingredients to the concentrate enables the active ingredient to remain in suspension. Therefore, the imported concentrate is changed in condition by the addition of the ingredients in the zone within the meaning of 19 U.S.C. § 3333(a) and for purposes of the limitation on duty deferral imposed by the NAFTA. Accordingly, CBP has determined that HRL 231152 be modified by HRL W231514.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HRL 231152, and any other ruling not specifically identified pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 231514, attached to this document. Additionally, pursuant to 19 U.S.C.

1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: July 22, 2008

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
July 22, 2008
OT:RR:CTF:ER W231514 KBR
Category: NAFTA Drawback

JOHN B. PELLEGRINI, ESQ.
MCGUIREWOODS, LLP
1345 Avenue of the Americas
New York, NY 10105-0106

Re: Syngenta Crop Protection, Inc.: Request for reconsideration and proposed modification of HRL 231152 (6/13/2006); 19 U.S.C. § 3333; 19 C.F.R. § 181.45; NAFTA drawback; same condition.

DEAR MR. PELLEGRINI:

This is in response to your request on behalf of your client, Syngenta Crop Protection, Inc. (Syngenta), dated 7/20/2006, for reconsideration of our determination in HRL 231152 (6/13/2006). We have also received your correspondence dated 8/10/2006, and 4/14/2008, and have taken into consideration your comments during our teleconference on 4/7/2008. Our determination upon reconsideration of the issue is explained below.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on June 11, 2008, in Vol. 42, No. 25 of the *Customs Bulletin*, proposing to modify HRL 231152. No comments were received in response to this notice.

FACTS:

In a 9/13/2005, ruling request, Syngenta requested that we rule that the product at issue, a liquid fungicide, was in “the same condition” within the meaning of 19 U.S.C. § 3333, when exported to Canada as when admitted to a foreign trade zone. If the fungicide is in the “same condition” it will not be subject to the NAFTA-imposed limitation on duty deferral on exportations to Canada and Mexico, *i.e.*, such duty-deferral may be granted only on the lesser of the total duties paid or owed on the importation into the United States or the total amount of duties paid on the exported good on its subsequent importation into Canada or Mexico. In response to this request, HRL 231152 (6/13/2006), was issued. HRL 231152 concluded that the addition of propylene glycol in the FTZ to the concentrated active ingredient imparted the characteristic of “flowability” to the end product, liquid fungicide, and

therefore, the exported fungicide was not in the same condition that it was when the concentrate was admitted to the FTZ. Thus, the NAFTA duty-deferral limitations applied.

The facts under consideration are these. Azoxystrobin Millbase concentrate, which is about 50% percent by weight active ingredient, will be imported in 1,000 liter tote tanks and admitted to a foreign trade zone. The concentrate is made up of water, a dispersant/surfactant, a preservative/anti-bacterial agent, an antifoaming agent and the active ingredient. Its CAS number is 13186033-8 and its product number is A1336D. Within the zone propylene glycol is added. In addition, a biocide is added and a stabilizer, *i.e.*, bentonite. According to Syngenta, the propylene glycol is added to dilute the concentrate and prevent freezing and the bentonite is added "to ensure that the active ingredient remains suspended in the solution ensuring a homogenous mixture of active ingredient." This ensures that, after further dilution with water by the end users, the fungicide can be applied via spraying and at a measurable rate of delivery.

The finished fungicide is about 23% Azoxystrobin Millbase by weight. The Azoxystrobin Millbase imported in concentrated form and the finished fungicide are both classified under subheading 3808.20.15, HTSUS. The fungicide is tested, packaged and labeled in the zone, then exported to Canada. The finished exported product is named "Abound Flowable," product number A12705a. Its CAS number is 13186033-8. The concentrate is not used as a fungicide in the U.S. because it is not registered with the Environmental Protection Agency and the ingredients added in the FTZ are necessary for use because, Syngenta explains, without the ingredients added in the FTZ, the Azoxystrobin Millbase would not remain in suspension making further the dilution in the field and spraying difficult.

When Syngenta's request was first considered, in response to a request to review the material safety data sheets for the imported concentrate and the exported fungicide, the CBP Laboratory stated that, "the additional ingredients in the exported product do not change the characteristic of the active ingredient or the products. But, the addition of the propylene glycol specifically to prevent freezing does change the condition of the exported product from the imported product. Without the propylene glycol, the product could freeze and would then lose its flowable condition." Based on this determination, we stated in HRL 231152, that, [The lab] has concluded that the characteristic of active ingredient in the liquid fungicide, as imported, is not changed by the processing done in the FTZ. [The lab] has found, however, that the propylene glycol is added to liquid fungicide to prevent the freezing of the liquid. Without the addition of propylene glycol, the liquid fungicide is susceptible to freezing in the colder climate of Canada, affecting its 'flowability.' Thus the article produced as a result of the processing in the FTZ goes beyond 'mere dilution of the imported product,' Given that flowability is a characteristic not found in the liquid fungicide before the addition of propylene glycol, we conclude that the addition of such to the liquid fungicide changes the condition of the liquid fungicide to the extent that it has become used. The use in this case consists of using the imported article to produce an article suitable for use as a liquid fungicide in [a] potentially freezing climate, such as Canada."

The request for reconsideration asserts that there are mistakes in the conclusions reached in HRL 231152. That is, propylene glycol has no effect on "flowability." The imported concentrate contains ingredients that effect

flowability and the fungicide is not used in freezing conditions. Syngenta states that the imported active ingredient contains two wetting agents, a biocide and a surfactant and that the “flowability,” *i.e.*, the measure of the fungicide’s efficient use in spraying equipment, is imparted to the fungicide by surfactants that are present in the imported active ingredient. “A surfactant, or surface active agent, is designed to reduce the surface tension of liquids. It is the surfactants that enhance the flowability of the finished product not propylene glycol” “Storage in cold conditions is the sole reason for the addition of propylene glycol” Our research reflects that flowability is directly related to the fungicide’s efficient use in spraying equipment. When asked to reconsider the facts in this case, the CBP lab stated, “propylene glycol is an antifreeze [added to the concentrate] for long term storage.”

ISSUE:

Whether the imported concentrate is changed in condition by the addition of the ingredients in the zone within the meaning of 19 U.S.C. § 3333(a), such that the exported fungicide is subject to the limitation on duty deferral imposed by the NAFTA?

LAW and ANALYSIS:

Section 203 of the North American Free Trade Agreement (NAFTA) Implementation Act (Public law 103–182; 107 Stat. 2057, 2086; 19 U.S.C. § 3333), provides for the treatment of goods subject to NAFTA drawback. Section 203(a)(2) of the NAFTA Implementation Act exempts from the general duty drawback (that is, the NAFTA “lesser of” rule) and duty deferral rules of article 303 of NAFTA, merchandise which is exported to another NAFTA party in the same condition as when it was imported. See Article 303.6(b) of NAFTA, which permits full drawback of U.S. duties upon exportation to other countries, including Canada and Mexico; 19 U.S.C. § 3333(a)(2). However, antidumping and countervailing duties may not be waived, remitted nor refunded under NAFTA. See 19 U.S.C. § 3333(e); 19 C.F.R. § 181.42(a).

Under § 3333(a), a good subject to NAFTA drawback means any good other than, *inter alia*—

(2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph—

(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good

(19 U.S.C. § 3333(a)(2)). The Customs Regulations issued under the authority of the NAFTA Implementation Act (see above) specifically provide for the availability of drawback on the exportation of merchandise to a NAFTA country (for effective dates of the provisions in these regulations, see 19 C.F.R. § 181.41). Paragraph (b)(1) of § 181.45, same condition defined, provides that:

For purposes of this subpart, a reference to a good in the “same condition” includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

...

(v) Putting up in measured doses, or packing, repacking, packaging or

repackaging; or
(vi) Testing, marking, labeling, sorting or grading.

The exemplars in § 181.45 are permitted so long as such actions do not “materially alters the characteristics of the good.”

First, we conclude that the statement made in HRL 231152, that “Given that flowability is a characteristic not found in the liquid fungicide before the addition of propylene glycol,” is not entirely correct. Flowability is a characteristic found in the imported concentrate. Second, HRL 231152 concluded that the addition of the ingredients to the Azoxystrobin Millbase changed the condition so that the exported fungicide was subject to the NAFTA-imposed limitations on drawback. We agree. While we acknowledge the similarities between the concentrate and the exported fungicide: they are classified under the same subheading, have very similar handling and data safety instructions and are assigned the same CAS numbers, among other things, the standard for use under 19 U.S.C. § 3333 and 19 C.F.R. § 181.45 is intentionally narrow. In Syngenta’s case, the addition of the ingredients in the zone does not fall into any of the exemplars in § 181.45(b)(1) and also materially alters the characteristic of the concentrate. Therefore, the exported fungicide is not in the same condition as the imported concentrate.

Syngenta asserts that the concentrate is merely diluted in the FTZ by the addition of the propylene glycol, which is permitted so long as such dilution does not alter the material characteristics of the good. The addition of the ingredients in the zone is not “mere dilution,” which, when given the common meaning, means “nothing more than” “making weaker or less concentrated.” The concentration of the active ingredient is reduced from 50% to about 23% by the addition of the other ingredients. But Syngenta states that “in order for the product to be used in spray equipment, the most common means of applying the fungicide, the ingredients added after importation are necessary” because without the ingredients added in the FTZ, the active ingredient would not remain in suspension making further dilution and spraying difficult. Thus, the “mere dilution” assertion is contradicted, *i.e.*, something in addition to a reduction in concentration happens to the Azoxystrobin Millbase.

In HRL 231372 (5/4/2006) we determined that painting adhesive on brushing sleeves so that rubber would bond to the sleeves was a use within the meaning of § 3333(a)(2) and § 181.45(b)(1) because “the application of the adhesive paint is necessary to the further processing of the brushing sleeves.” In exactly the same way, the addition of the ingredients in the zone is necessary for the further processing of the fungicide. The added ingredients are necessary so that the fungicide may be further diluted. Thus, the addition of the ingredients to the fungicide changes its condition within the meaning of § 3333(a)(2) and § 181.45(b)(1) and is not just a change in the concentration of the active ingredient.

In HRL 555740 (5/28/1991) a herbicide was mixed with a dispersant, two wetting agents and a diluent clay to enhance the product’s water solubility so that less agitation was required for proper mixing. The herbicide, which was usable before the operations considered, was also granulated which consisted of spraying the herbicide with water, adding heat to remove the excess water and removing grains of an inconsistent size. The granulation eliminated a powdery consistency making the product easier to measure for the end user. No chemical change took place in the herbicide through the

processes. The importer described the processes as making the herbicide “more user friendly.” In HRL 555740 we held that “we find that the formulation and granulation processes constitute alterations within the meaning of subheading 9802.00.50, HTSUS.”

Syngenta argues that the addition of the ingredients to the Azoxystrobin Millbase makes the fungicide “more user friendly” and cites HRL 555740 for the proposition that the additions made by Syngenta to the fungicide “constitute something less than a substantial alteration.” In fact, HRL 555740 held that the subject herbicide was “improved in condition” and “altered.” Moreover, unlike Syngenta’s fungicide, the herbicide in HRL 555740 was usable as a herbicide before the processing that improved its condition. Thus, clearly, 555740 does not lead to the conclusion that making a product “more user friendly” is indicative that the product was not altered and it is unclear how HRL 555740 supports Syngenta’s position that the concentrate is not changed in condition or altered in the zone.

In HRL 230166 we held that the addition of silicon dioxide – an anti-caking agent which absorbs moisture and prevents powders or granules from sticking – to vegetable powder changes the condition of the vegetable powder. The vegetable powder was made of ground-up vegetables and without the silicon dioxide the powder would be “clumpy and less easily pourable” and thus, the vegetable powder was not in the same condition after the addition of the silicon dioxide. The change in the vegetable powder after the silicon dioxide was added is analogous to the change in the fungicide after the ingredients are added in the zone. The addition of the silicon dioxide made the powder stick together less and thus it was more easily poured. In the same way, the addition of the ingredients to the concentrate enable the active ingredient to remain in suspension that further dilution and spraying is easier. Thus, the silicon dioxide changed the vegetable powder into usable, *i.e.*, pourable form, exactly the same way that the added ingredients render the fungicide concentrate into usable, *i.e.*, sprayable form.

Finally, CBP has considered how the manufacturer treats the good before and after the process at issue when determining whether there has been a change in condition. In HRL 228961 (1/23/2002) we considered whether indigo powder of approximately 96 percent strength was in the same condition when, after adding water, a dispersing agent and an antimicrobial agent and then passing the powder through a sand mill to reduce the size of the indigo particles, the result was a paste of approximately 42 percent concentration. In addition to other factors, we looked at the differences in the way the powder and paste were treated by the manufacturer. In that ruling we found it significant that the powder and paste were treated as different products *i.e.*, they were described separately on the web site, the powder was packaged in cartons and the paste was packaged in drums and the handling instructions were different. In this case, Syngenta treats the concentrate differently than it treats the fungicide. Syngenta refers to the concentrate as “Azoxystrobin Millbase,” product number A13367D and the exported product as “Abound Flowable,” product number A12705A. The Azoxystrobin Millbase is imported in 1000 liter tanks but the fungicide is packaged into different containers with different labeling. The Azoxystrobin Millbase concentrate is not used in the U.S. but the Abound Flowable is sold and used in the U.S.

Considering all the factors described above, the exported fungicide is not in the same condition within the meaning § 3333 and § 181.45 as the im-

ported Azoxystrobin Millbase. Accordingly, the conclusion in HRL 231152 was justified and correct.

HOLDING:

The imported concentrate is changed in condition by the addition of the ingredients in the zone within the meaning of 19 U.S.C. § 3333(a), and therefore the exported fungicide is considered “used” for purposes of the limitation on duty deferral imposed by the NAFTA.

EFFECT ON OTHER RULINGS:

HRL 231152, dated June 13, 2006, is **MODIFIED**. In accordance with 19 U.S.C. §1625(c), this ruling will become effective sixty (60) days after publication in the *Customs Bulletin*.

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

