

U.S. Customs and Border Protection

CBP Decisions

DEPARTMENT OF THE TREASURY

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

Docket No. USCBP-2007-0056

CBP Dec. 08-29

RIN 1505-AB76

UNITED STATES - MOROCCO 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 some changes, interim amendments to title 19 of the Code of Federal Regulations (“CFR”) which were published in the **Federal Register** on June 29, 2007, as CBP Dec. 07-51 to implement the preferential tariff treatment and other customs-related provisions of the United States-Morocco Free Trade Agreement signed by the United States and the Kingdom of Morocco.

DATES: Final Rule effective September 4, 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:**Background**

On June 15, 2004, the United States and the Kingdom of Morocco (the “Parties”) signed the U.S.-Morocco Free Trade Agreement (“MFTA” or “Agreement”). The stated objectives of the MFTA are to: encourage expansion and diversification of trade between the Parties; eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties; promote conditions of fair competition in the free trade area; substantially increase investment opportunities in the territories of the Parties; provide adequate and effective protection and enforcement of intellectual property rights in each Party’s territory; create effective procedures for the implementation and application of the MFTA, for its joint administration and for the resolution of disputes; and establish a framework for further regional and multilateral cooperation to expand and enhance the benefits of the MFTA.

The provisions of the MFTA were adopted by the United States with the enactment of the United States-Morocco Free Trade Agreement Implementation Act (the “Act”), Pub. L. 108–302, 118 Stat. 1103 (19 U.S.C. 3805 note), on August 17, 2004. Section 205 of the Act requires that regulations be prescribed as necessary to implement these provisions of the MFTA.

On December 22, 2005, the President signed Proclamation 7971 to implement the provisions of the MFTA. The proclamation, which was published in the **Federal Register** on December 27, 2005 (70 FR 76649), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of Publication 3721 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 27, incorporating the relevant MFTA 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 MFTA where the special program indicator “MA” appears in parenthesis in the “Special” rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XII to Chapter 99 to provide for temporary tariff rate quotas and applicable safeguards implemented by the MFTA.

Those customs-related MFTA 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 Four (Textiles and Apparel), Chapter Five (Rules of Origin), and Chapter Six (Customs Administration).

In Chapter One of the MFTA, certain general definitions in Article 1.3 have been incorporated into the MFTA implementing regula-

tions. In MFTA Chapter Two, Article 2.6 (Goods Re-entered after Repair or Alteration) requires implementation by CBP.

Chapter Four of the MFTA sets forth the measures relating to trade in textile and apparel goods between Morocco and the United States under the MFTA. The provisions within Chapter Four that require regulatory action by CBP are Article 4.3 (Rules of Origin and Related Matters) and Article 4.5 (Definitions).

Chapter Five of the MFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Morocco (MFTA Party) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as specified in the Agreement. Under Article 5.1, originating goods may be grouped in three broad categories: (1) goods that are wholly the growth, product, or manufacture of one or both of the Parties; (2) goods (other than those covered by the product-specific rules set forth in Annex 4–A or Annex 5–A) that are new or different articles of commerce that have been grown, produced, or manufactured in the territory of one or both of the Parties, and that have a minimum value-content, *i.e.*, at least 35 percent of the good's appraised value must be attributed to the cost or value of materials produced in one or both of the Parties plus the direct costs of processing operations performed in one or both of the Parties; and (3) goods that satisfy the product-specific rules set forth in Annex 4–A (textile or apparel goods) or Annex 5–A (certain non-textile or non-apparel goods).

Article 5.2 explains that the term “new or different article of commerce” means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. Article 5.3 provides that a good will not be considered to be a new or different article of commerce as the result of undergoing simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. CBP notes that, pursuant to letters of understanding exchanged between the Parties on June 16, 2004, in determining whether a good meets the definition of a “new or different article of commerce” in § 10.769(i), the United States should be guided by the provisions of Part 102 of the CBP regulations (19 CFR Part 102).

Article 5.4 provides for the accumulation of production in the territory of one or both of the Parties in determining whether a good qualifies as originating under the MFTA. Articles 5.5 and 5.6 set forth the rules for calculating the value of materials and the direct costs of processing operations, respectively, for purposes of determining whether a good satisfies the 35 percent value-content requirement.

Articles 5.7 through 5.9 consist of additional sub-rules applicable to originating goods, involving retail packaging materials, packing materials for shipment, indirect materials, and transit and transshipment. In addition, Articles 5.10 and 5.11 set forth the procedural requirements that apply under the MFTA, in particular with regard to importer claims for preferential tariff treatment. Article 5.14 provides definitions of certain of the terms used in Chapter Five of the MFTA. The basic rules of origin in Chapter Five of the MFTA are set forth in General Note 27, HTSUS, and in Part 102 of title 19 of the Code of Federal Regulations.

Chapter Six sets forth the customs operational provisions related to the implementation and administration of the MFTA.

Customs and Border Protection (“CBP”) is responsible for administering the provisions of the MFTA and the Act that relate to the importation of goods into the United States from Morocco. On June 29, 2007, CBP published CBP Dec. 07–51 in the **Federal Register** (72 FR 35647), setting forth interim amendments to implement the preferential tariff treatment and customs-related provisions of the MFTA. In order to provide transparency and facilitate their use, the majority of the MFTA implementing regulations set forth in CBP-Dec. 07–51 were included within new Subpart M in Part 10 of title 19 of the Code of Federal Regulations (19 CFR Subpart M, Part 10). However, in those cases in which MFTA implementation was more appropriate in the context of an existing regulatory provision, the MFTA regulatory text was incorporated in an existing part within the CBP regulations.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on June 29, 2007, CBP Dec. 07–51 provided for the submission of public comments that would be considered before adopting the interim regulations as a final rule. The prescribed public comment period closed on August 28, 2007. No comments were received in response to the solicitation of public comments in CBP Dec. 07–51.

Changes to the Regulations

The final rulemaking text set forth below incorporates certain changes, as discussed below, which CBP believes are necessary based on further internal review of the interim regulatory text.

Definition of “new or different article of commerce”.

The words “new or different article of commerce” are defined in § 10.769(i) of the interim regulations as a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed. This definition has been revised in this final rule document to provide that such an 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” the CBP regulations (19 CFR §§ 102.1 through 102.21). CBP believes that this revised definition is more transparent and is consistent with letters of understanding exchanged between the Parties which provide that, in determining whether a good meets the definition of a “new or different article of commerce,” the United States and Morocco should be guided by the provisions of Part 102 of the CBP regulations.

CBP also notes that this revised definition is identical to the definition of the same term set forth in the interim regulations implementing the United States-Bahrain Free Trade Agreement (“BFTA”) (see § 10.809(i), CBP regulations (19 CFR 10.809(i))). The rules of origin set forth in the BFTA (including letters of understanding exchanged between the Parties concerning the interpretation of “new or different article of commerce”) closely parallel those in the MFTA.

Other changes.

1. In § 10.761, relating to the scope of Subpart M, the last sentence has been revised to add Part 102 as one of the parts in the CBP regulations that include amendments implementing the MFTA, consistent with the revision to the definition of “new or different article of commerce” in § 10.769(i) discussed above;

2. In § 10.769, the definition of “substantially transformed” (formerly paragraph (o)) has been removed as those words are no longer used in Subpart M as a result of the revision of the definition of “new or different article of commerce” discussed above;

3. In § 10.770, which sets forth the basic MFTA rules of origin, paragraph (a)(2) has been revised to add the words “, as defined in § 10.769(i) of this subpart,” immediately following the words “new or different article of commerce” for clarification purposes;

4. Section 10.785, which concerns verifications conducted in Morocco by Moroccan authorities (at the request of CBP) relating to textile and apparel goods imported into the United States, has been removed in its entirety. CBP believes that the provisions of § 10.785 are unnecessary to the proper implementation of the MFTA as they relate primarily to actions that the Government of Morocco and CBP may take in connection with verifications performed in Morocco. As such, these provisions impose no requirements on U.S. importers of textile or apparel goods or other members of the trade. In addition, CBP notes that the removal of § 10.785 provides consistency between the MFTA implementing regulations and the interim regulations implementing the BFTA, which include no provisions regarding verifications in Bahrain of U.S. imports of textile and apparel products. The verification provisions in the MFTA closely parallel those in the BFTA;

5. As a result of the removal of § 10.785, discussed above, §§ 10.786 through 10.788 of the interim regulatory text have been re-designated as §§ 10.785 through 10.787, respectively; and

6. In § 102.0, relating to the scope of Part 102, the third sentence has been revised by adding the words “§ 10.769 of the United States-Morocco Free Trade Agreement regulations and” immediately following the words “new or different article of commerce under”, consistent with the revision of the definition of “new or different article of commerce” discussed above.

Conclusion

Accordingly, based on the considerations discussed above, CBP believes that the interim regulations published as CBP Dec. 07–51, should be adopted as a final rule with certain changes as discussed above and as set forth below.

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. 07–51 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 Administrative Procedure Act. 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 1651–0117.

The collections of information in these regulations are in §§ 10.703 and 10.704. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the MFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other

rights or benefits under the MFTA 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 102

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

19 CFR Part 162

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

19 CFR Part 163

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

19 CFR Part 178

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

Amendments to the CBP Regulations

Accordingly, the interim rule amending Parts 10, 162, 163, and 178 of the CBP regulations (19 CFR Parts 10, 162, 163, and 178), which was published at 72 FR 35647 on June 29, 2007, is adopted as a final rule with certain changes as discussed above and as 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 M 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;

* * * * *

Sections 10.761 through 10.787 also issued under Pub. L. 108-302, 118 Stat. 1103 (19 U.S.C. 3805 note).

* * * * *

2. Section 10.761 is amended by revising the last sentence to read as follows:

§ 10.761 Scope.

* * * Additional provisions implementing certain aspects of the MFTA and the Act are contained in Parts 102, 162, and 163 of this chapter.

3. Section 10.769 is amended by revising paragraph (i) and removing paragraph (o). Revised paragraph (i) reads 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;

* * * * *

§ 10.770 [Amended]

4. Section 10.770 is amended by adding the words “, as defined in § 10.769(i) of this subpart,” immediately following the words “new or different article of commerce” in paragraph (a)(2).

§ 10.785 [Removed]

5. Section 10.785 is removed.

§§ 10.786 through 10.788 [Redesignated as §§ 10.785 through 10.787]

6. Sections 10.786 through 10.788 are redesignated as §§ 10.785 through 10.787, respectively.

PART 102 - RULES OF ORIGIN

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

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

8. Section 102.0 is amended by revising the third sentence to read as follows:

§ 102.0 Scope

* * * The rules set forth in §§ 102.1 through 102.21 of this part will also apply for purposes of determining whether an imported good is a new or different article of commerce under § 10.769 of the United States-Morocco Free Trade

Agreement regulations and § 10.809 of the United States-Bahrain Free Trade Agreement regulations. * * *

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

Approved: July 31, 2008

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

[Published in the Federal Register, August 5, 2008 (73 FR 45351)]


*General Notices***DEPARTMENT OF THE TREASURY****19 CFR PART 24****Docket No. USCBP 2007-0111****RIN 1505-AB97****ELECTRONIC PAYMENT AND REFUND OF QUARTERLY
HARBOR MAINTENANCE FEES**

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend title 19 of the Code of Federal Regulations by prescribing alternative procedures by which payers of the quarterly harbor maintenance fee (HMF) may submit their payments or refund requests to Customs and Border

Protection (CBP) electronically via an Internet account established by the payer and located at www.pay.gov. CBP will continue to accept quarterly HMF payments or refund requests via mail. It is also proposed to clarify the regulations to state that each HMF quarterly payment, whether paper or electronic, must be accompanied by a CBP Form 349 (HMF Quarterly Summary Report). The changes proposed in this document are intended to provide the trade with expanded electronic payment/refund options for quarterly HMFs and to modernize and enhance CBP's port use fee collection efforts.

DATE: Comments must be received on or before October 6, 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 2007-0111.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W. (Mint Annex), Washington, D.C. 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Office of Finance, Revenue Division, Collections, Refunds and Analysis Branch, (317) 614-4511.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the

proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

Harbor Maintenance Fee (HMF)

The harbor maintenance fee (HMF) was created by the Water Resources Development Act of 1986 (Public Law 99-622, 26 U.S.C. 4461 *et. seq.*). The purpose of the fee is to require those who benefit from the maintenance of U.S. ports and harbors to share in the associated costs of such maintenance. The HMF is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation.

Existing HMF regulations

The HMF implementing regulations are set forth in § 24.24 of title 19 of the Code of Federal Regulations (19 CFR 24.24). Section 24.24(e) sets forth the procedures applicable to HMF collections, supplemental payments, and refunds. Generally, this provision requires accumulated HMFs to be paid on a quarterly basis by mailing a check or money order to a specified CBP address, accompanied by a CBP Form 349 (HMF Quarterly Summary Report). See 19 CFR 24.24(e)(1)(ii), (2)(iii), and (3)(ii). A supplemental HMF payment or refund request must be accompanied by a CBP Form 350 (HMF Amended Quarterly Summary Report), along with a copy of the CBP Form 349. See 19 CFR 24.24(e)(4)(i) and (iii). Section 24.24(f) provides that all quarterly payments required by this section be received no later than 31 days after the close of the quarter being paid.

Proposed amendments to the HMF regulations

Most of the changes proposed in this document affect 19 CFR 24.24(e) which, as noted above, sets forth the procedures applicable to HMF payments and refunds. Specifically, this document proposes new alternative procedures that would permit the electronic payment of quarterly HMFs using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at www.pay.gov. Requests for HMF refunds may also be made through www.pay.gov. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive refund payments via mail. As these proposed

electronic procedures are voluntary, CBP will continue to accept HMF payments and refund requests sent via mail.

Pay.gov is a secure Internet payment platform provided by the Financial Management Service (FMS) for payments to federal agencies. CBP has migrated payment of certain fees and taxes to the pay.gov platform through the use of ACH debit transactions. CBP will distribute a user-guide to HMF payers that provides information regarding account set-up and related issues.

This document also proposes to clarify 19 CFR 24.24(e) to require that, for both paper and electronic payments of the quarterly HMF, a CBP Form 349 must accompany each HMF payment. All three provisions of the existing HMF payment regulations set forth at 19 CFR 24.24(e)(1)(ii), (2)(iii), and (3)(ii) require the payer to pay all fees for which he is liable for the quarter by mailing a check or money order payable to CBP and a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349. Based on the existing terms of these provisions, a payer is required to remit a single quarterly payment to CBP accompanied by a single CBP Form 349. In practice, however, CBP has received HMF payments by methods that do not follow the regulations. For example, CBP has received several HMF payments from a single payer for a quarter or, in the alternative, a single HMF payment that is accompanied by several CBP Form 349s. In a purely paper environment, CBP was able to process these submissions. In the context of an electronic paperless environment, however, it is proposed to require that a single CBP Form be submitted with each HMF payment to support the transactional requirements of www.pay.gov and to promote consistency and harmonization of HMF collection procedures.

These proposed changes, other than those involving non-substantive editorial changes, are discussed below in more detail.

EXPLANATION OF AMENDMENTS

It is proposed to amend 19 CFR 24.24 to set forth alternative expanded procedures for the electronic payment and refund of quarterly HMFs. It is also proposed to amend this section to require that each HMF quarterly payment or refund request, whether paper or electronic, be accompanied by a CBP Form 349 or 350, as appropriate.

Section 24.24(c)(8)(i)

Section 24.24(c) describes the types of commercial cargo that are exempt from the HMF. Within this provision, paragraph (c)(8)(i) specifies donated cargo that is certified by CBP as intended for use in humanitarian or development assistance overseas, including contiguous countries, as exempt from the HMF. The existing regulations direct that a request for a refund made pursuant to this provision should be made on a CBP Form 350 and sent to the Office of Finance

located at CBP Headquarters in Washington, D.C., along with a CBP Form 349 for each quarter for which a refund is requested and supporting evidence that establishes that the entity donating the cargo is a nonprofit organization or cooperative and that the cargo was intended for humanitarian or development assistance overseas.

It is proposed to amend this provision to clarify that HMF refund requests must be submitted to CBP on a Harbor Maintenance Fee Amended Quarterly Summary Report, CBP Form 350, and to provide that the form may either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, or it may be submitted electronically to CBP via an Internet account established by the payer and located at www.pay.gov. Upon request by CBP, the party requesting the refund must also submit to CBP, via mail, the Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349, for the quarter covering the payment to which the refund request relates as well as any supporting documentation deemed necessary by CBP to certify that the entity donating the cargo is a nonprofit organization or cooperative and that the cargo was intended for humanitarian or development assistance overseas (including contiguous countries). Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

Section 24.24(e)

Section 24.24(e) sets forth the procedures applicable to HMF collections, supplemental payments and refunds. Section 24.24(e)(1)(ii) prescribes the method by which the shipper whose name appears on the Vessel Operation Report must pay the HMF for domestic vessel movements. Specifically, this provision directs that the shipper pay the accumulated fees on a quarterly basis by mailing a check or money order to CBP along with the CBP Form 349.

It is proposed to amend this provision to state that the shipper may submit the quarterly HMF payments to CBP either electronically using ACH via an Internet account established by the payer and located at www.pay.gov or by check or money order to the address specified therein. It is also proposed to clarify this provision to state that each HMF quarterly payment, whether paper or electronic, must be accompanied by a CBP Form 349.

Several other provisions within § 24.24(e) currently require the payer to submit HMF payments or refund requests on a quarterly basis by mailing a check or money order to CBP along with the CBP Form 349 or 350, as applicable.

In §§ 24.24(e)(2)(iii), 24.24(e)(3)(ii), and 24.24(e)(4)(iii), it is proposed to make changes similar to those described above to reflect that a payer may submit quarterly HMF payments to CBP either electronically using ACH via an Internet account established by the

payer and located at www.pay.gov or by check or money order to the address specified therein and that each HMF payment, whether paper or electronic, must be accompanied by a CBP Form 349. Similarly, it is proposed that each HMF refund request must be submitted on a CBP Form 350 and may either be submitted to CBP electronically via an Internet account established by the payer and located at www.pay.gov or via mail. Upon request by CBP, the party requesting the refund must submit to CBP, via mail, the CBP Form 349 for the quarter covering the payment to which the refund request relates as well as any supporting documentation deemed necessary by CBP. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

Section 24.24(e)(4)(iv)(B)(4) provides that a protest may be filed for any payment not approved for a refund in a Revised Report/Certification within 90 days of the issuance of that report. As the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429, 118 Stat. 2593) extended the time to file and amend a protest from 90 days to 180 days, it is proposed to amend this provision accordingly.

Section 24.24(g)

Section 24.24(g) sets forth the recordkeeping requirements applicable to this section. This provision directs the parties responsible for the maintenance of records to provide certain contact information to the Director, Accounting Services in Accounts Receivable. It is proposed to amend this provision to reflect that this information be provided to the Director, Revenue Division.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because these proposed amendments implement alternative procedures that provide expanded electronic payment/refund options for quarterly HMFs and do not require small entities to change their business practices, 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. Further, these proposed amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1651–0055 (harbor

maintenance fee). This rule does not involve any material change to the existing approved information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

SIGNING AUTHORITY

This document is being issued in accordance with 19 CFR 0.1(a)(1).

LIST OF SUBJECTS

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Exports, Imports, Interest, Reporting and recordkeeping requirements, Taxes, User fees, Wages.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, part 24 of title 19 of the CFR (19 CFR Part 24) is proposed to be amended as set forth below.

PART 24 - CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

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

* * * * *

2. In § 24.24:

a. The introductory text to paragraph (c)(8) is amended by removing the words “the U.S. Customs Service” and adding in their place the term “CBP”;

b. Paragraph (c)(8)(i) is revised;

c. Paragraph (c)(8)(ii) is amended by: removing the word “shall” each place it appears and adding in its place the word “must”; and removing the word “Customs” and adding in its place the term “CBP”;

d. The introductory text to paragraph (d)(3) is amended by removing the word “shall” and adding in its place the word “will”;

e. Paragraph (e)(1)(ii) is revised;

f. Paragraph (e)(2)(i) is amended: in the second sentence, by removing the words “U.S. Customs” and adding in their place the term

“CBP”; and in the third sentence, by removing the word “shall” and adding in its place the word “will”;

g. Paragraph (e)(2)(ii) is amended: in the first sentence, by removing the word “shall” and adding in its place the word “must”, and by removing the word “Customs” and adding in its place the term “CBP”; in the second sentence, by removing the language “U.S. Customs Entry Summary Form (Customs)” and adding in its place “CBP Entry Summary Form (CBP)”; and in the third sentence, by removing the word “shall” and adding in its place the word “must”;

h. Paragraph (e)(2)(iii) is revised;

i. Paragraph (e)(3)(ii) is revised;

j. Paragraph (e)(4)(i) is amended by removing the fourth and fifth sentences;

k. Paragraph (e)(4)(ii) is amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”;

l. Paragraph (e)(4)(iii) is amended by: removing the word “Customs” each place it appears and adding in its place the term “CBP”; and adding after the last sentence the following language, “Supplemental payments, accompanied by the requisite CBP Form 349, must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, with a check or money order payable to U.S. Customs and Border Protection, or submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at www.pay.gov. HMF refund requests must be submitted to CBP on a Harbor Maintenance Fee Amended Quarterly Summary Report, CBP Form 350, and must either be mailed to the above address or submitted electronically to CBP via an Internet account established by the payer and located at www.pay.gov. Upon request by CBP, the party requesting the refund must also submit to CBP, via mail, the CBP Form 349 for the quarter covering the payment to which the refund request relates as well as any supporting documentation deemed necessary by CBP. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.”;

m. The introductory text to paragraph (e)(4)(iv) is amended by removing the word “Customs” and adding in its place the term “CBP”;

n. Paragraph (e)(4)(iv)(A) is amended by adding after the last sentence the following language, “Refund requests must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, or submitted electronically to CBP via an Internet account established by the payer and located at www.pay.gov. Approved HMF refund payments will be made using the Automated Clearinghouse (ACH) to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.”;

o. Paragraphs (e)(4)(iv)(B)(1), (2), and (3) are amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”;

p. Paragraph (e)(4)(iv)(B)(4) is amended by: removing the word “Customs” and adding in its place the term “CBP”; and removing the number “90” each place it appears and adding in its place the number “180”;

q. Paragraph (e)(4)(iv)(B)(5) is amended: in the second sentence, by removing the words “by Customs” and adding in their place the words “by CBP”, and by removing the words “and Customs” and adding in their place the words “and CBP’s”; and in the fourth and fifth sentences, by removing the word “Customs” each place it appears and adding in its place the term “CBP”;

r. Paragraph (e)(4)(iv)(C) is amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”;

s. Paragraph (g) is amended: in the first, second, fourth, and fifth sentences, by removing the word “shall” each place it appears and adding in its place the word “must”, and by removing the word “Customs” each place it appears and adding in its place the term “CBP”; and in the third sentence, by removing the language “shall advise the Director, Accounting Services - Accounts Receivable, P.O. Box 68903, Indianapolis, Indiana 46268, of the name, address, and telephone number of a responsible officer who shall be” and adding in its place the language, “must advise the Director, Revenue Division, 6650 Telecom Drive, Indianapolis, Indiana, 46278, of the name, address, email and telephone number of a responsible office who is”;

t. Paragraph (h)(1) is amended by removing the word “shall” each place it appears and adding in its place the word “will”;

u. Paragraph (h)(2) is amended by removing the word “shall” each place it appears and adding in its place the word “must”; and

v. Paragraph (h)(3) is amended by removing the word “shall” each place it appears and adding in its place the word “will”.

The revisions to § 24.24 read as follows:

§ 24.24 Harbor maintenance fee.

* * * * *

(c) * * *

(8) * * *

(i) The donated cargo is required to be certified as intended for use in humanitarian or development assistance overseas by CBP. Subsequent to payment of the fee, a refund may be requested by submitting to CBP a Harbor Maintenance Fee Amended Quarterly Summary Report, CBP Form 350. The CBP Form 350 must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, or submitted electronically to CBP using the Automated Clearinghouse

(ACH) via an Internet account established by the payer and located at www.pay.gov. Upon request by CBP, the party requesting the refund must also submit to CBP, via mail, the Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349, for the quarter covering the payment to which the refund request relates as well as any supporting documentation deemed necessary by CBP to certify that the entity donating the cargo is a nonprofit organization or cooperative and that the cargo was intended for humanitarian or development assistance overseas (including contiguous countries). A description of the cargo listed in the shipping documents and a brief summary of the intended use of the goods, if such use is not reflected in the documents, are acceptable evidence for certification purposes. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

* * *

* * * * *

(e) * * *

(1) * * *

(ii) Fee payment. The shipper whose name appears on the Vessel Operation Report must pay all accumulated fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, with a check or money order payable to U.S. Customs and Border Protection, or the CBP Form 349 and payment must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at www.pay.gov.

(2) * * *

(iii) Foreign Trade Zones. In cases where imported cargo is unloaded from a commercial vessel at a port within the definition of this section and admitted into a foreign trade zone, the applicant for admission (the person or corporation responsible for bringing merchandise into the zone) who becomes liable for the fee at the time of unloading pursuant to paragraph (e)(3)(i) of this section, must pay all fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, with a check or money order payable to

U.S. Customs and Border Protection, or the CBP Form 349 and payment must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at www.pay.gov. Fees must be paid for all shipments unloaded and admitted to the zone, or in the case of direct deliveries under §§ 146.39 and 146.40 of this chapter, unloaded and received in the zone under the bond of the foreign trade zone operator.

(3) * * *

(ii) Fee payment. The operator of the passenger-carrying vessel must pay the accumulated fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, with a check or money order payable to U.S. Customs and Border Protection, or the CBP Form 349 and payment must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at www.pay.gov.

* * * * *

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

Approved: July 31, 2008

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

[Published in the Federal Register, August 5, 2008 (FR 45364)]



General Notice

DATES AND DRAFT AGENDA OF THE FORTY-SECOND SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the forty-second session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATE: August 5, 2008

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, Staff Assistant, Tariff Classification and Marking Branch, U.S. Customs and Border Protection (202-572-8831), or David Beck, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System (“Harmonized System Convention”). The Harmonized Commodity Description and Coding System (“Harmonized System”), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee (“HSC”). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC’s responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the forty-second and it will be held from September 22, 2008 to October 3, 2008.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Homeland Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission (“ITC”), jointly represent the U.S. government at the sessions of the HSC. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

GAIL A. HAMILL,
Chief,
Tariff Classification and Marking Branch.

Attachment



WORLD CUSTOMS ORGANIZATION
 ORGANISATION MONDIALE DES DOUANES
 Established in 1952 as the Customs Co-operation Council
 Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
 COMMITTEE

NC1312E1a

-
 42nd Session

O. Eng.

Brussels, 1 August 2008.

DRAFT AGENDA FOR THE 42ND SESSION
 OF THE HARMONIZED SYSTEM COMMITTEE

From : Monday 22 September 2008 (11.00 a.m.)
To : Friday 3 October 2008

N.B. : Wednesday 17 September (10.00 a.m.) to Friday 19 September 2008 : Pre-session Working Party (to examine the questions under Agenda Item VI)

Monday 22 September 2008 (9.30 a.m. – 10.30 a.m.) : Adoption of the Report of the 37th Session of the Review Sub-Committee

I. ADOPTION OF THE AGENDA

1. Draft Agenda NC1312E1a
2. Draft Timetable NC1313B1a

II. REPORT BY THE SECRETARIAT

1. Position regarding Contracting Parties to the HS Convention and related matters NC1314E1a
2. Report on the last meeting of the Policy Commission (59th Session) and the Council (111th/112th Sessions) NC1315E1a
3. Approval of decisions taken by the Harmonized System Committee at its 41st Session NG0139E1a
 NC1311B1a
 NC1316E1a
4. Capacity building activities of the Nomenclature and Classification Sub-Directorate NC1317E1a
5. Co-operation with other international organisations NC1318E1a
6. New information provided on the WCO Web site NC1319E1a

NC1312E1a

- 7. Annual survey to determine the percentage of national revenue represented by Customs duties NC1320E1a
- 8. Survey on Free Trade Agreements NC1321E1a
- 9. Other

III. GENERAL QUESTIONS

- 1. Possible amendment of Article 8 of the HS Convention with a view to removing the Council from its purely administrative role with regard to HS reservations, and to making the fast-track procedure the default reservation procedure (Reservation by the US) NC1322E1a

IV. RECOMMENDATIONS

- 1. Draft Recommendation of the Customs Co-operation Council on the insertion in national statistical nomenclatures of subheadings for substances controlled under the Convention on the Prohibition of the development, production, stockpiling and use of Chemical Weapons and on their destruction NC1323E1a

V. REPORT OF THE REVIEW SUB-COMMITTEE

- 1. Report of the 37th Session of the Review Sub-Committee NR0751E1b
- 2. Matters for decision..... NC1324E1a
- 3. Possible amendment of heading 24.03. NC1325E1a
- 4. Possible amendment to the General Explanatory Note to Chapter 41 to clarify the words "whole hides and skins" and "split hides and skins" NC1326E1a
- 5. Scope of the provisionally adopted new subheading 9504.50 NC1327E1a
- 6. Possible misalignment between the English and French texts of the Explanatory Note to heading 95.04 NC1328E1a
- 7. Possible amendment of Note 1 to Chapter 38..... NC1329E1a

VI. REPORT OF THE PRESESSIONAL WORKING PARTY

- 1. Amendments to the Compendium of Classification Opinions to reflect the classification of pumpkin seeds in subheading 1212.99 Annex A NC1330E1a
- 2. Amendments to the Compendium of Classification Opinions to reflect the classification of a coconut water beverage in subheading 2202.90 NC1330E1a Annex B

		NC1312E1a
3.	Amendments to the Compendium of Classification Opinions to reflect the classification of correction tapes in subheading 3824.90.....	NC1330E1a Annex C
4.	Amendments to the Explanatory Notes to headings 84.28 and 84.79 to reflect the classification of Passenger Boarding Bridges in heading 84.79	NC1330E1a Annex D
5.	Amendments to the Compendium of Classification Opinions to reflect the classification of a separately presented power distribution block in subheading 8536.69	NC1330E1a Annex E
6.	Amendments to the Compendium of Classification Opinions to reflect the classification of a warming blanket in subheading 9018.90	NC1330E1a Annex F
7.	Amendments to the Compendium of Classification Opinions to reflect the classification of "Sony PlayStation 3" in subheading 9504.10.....	NC1330E1a Annex G
VII. FURTHER STUDIES		
1.	Classification of separately presented outdoor units of compression-type split-system air conditioning machines (Reservation by the EC).....	NC1331E1a
2.	Classification of products containing more than 99.2 % of sodium sulphate and more than 98.5 % of sodium sulphate, respectively (Reservation by Russia).....	NC1332E1a
3.	Classification of vehicles by the name "Jacobsen® Model 1100 and 1110 Haulers" (Reservation by the EC).....	NC1333E1a
4.	Classification of polyurethane foam in aerosol containers (Reservation by Brazil).....	NC1334E1a
5.	Possible amendment of the Explanatory Note to heading 95.06 (Reservation by Japan)	NC1335E1a
6.	Classification of certain jojoba products (Reservation by the EC)..	NC1336E1a
7.	Possible amendment of the Explanatory Note to GIR 3 (b)	NC1267E1a (HSC/41) NC1337E1a
8.	Classification of certain methanol or ethanol mixtures with gasoline	NC1338E1a
9.	Scope of headings 22.06 and 22.08	NC1339E1a

NC1312E1a

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|-----|---|-----------------------|
| 10. | Scope of Note 1 to Chapter 25 | NC1340E1a |
| 11. | General study on pegylation and its effects on the classification of pegylated pharmaceutically active substances | NC1341E1a |
| 12. | Possible amendment of the Explanatory Note to Chapter 29 | NC1342E1a |
| 13. | Classification of the "linaclotide (INN)" | NC1343E1a |
| 14. | Possible amendment of the Explanatory Note to heading 84.15 (Proposal by Brazil) | NC1344E1a |
| 15. | Possible amendment of the Explanatory Note to heading 85.09 .. | NC1345E1a |
| 16. | Classification of lamp posts (Request from Madagascar) | NC1346E1a |
| 17. | Classification of the "ionaprisan (INN)" | NC1347E1a |
| 18. | Classification of a coconut preparation (Request by Norway) | NC1349E1a |
| 19. | Classification of an APC power distribution unit (model APC 9568) (Request by Belarus) | NC1350E1a |
| 20. | Possible amendment of the Explanatory Notes to GIR1 and GIR2 (a) (Proposal by Canada)..... | NC1296E1a
(HSC/41) |
| 21. | Possible amendments to Classification Opinions 9503.00/4, 9503.00/5 and 9503.00/7 to 9503.00/9 | NC1352E1a |

VIII. NEW QUESTIONS

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|----|---|-----------|
| 1. | Classification of an ironing machine (Request by Belarus)..... | NC1353E1a |
| 2. | Possible amendment of the Explanatory Note to heading 09.02 (Request by China) | NC1354E1a |
| 3. | Classification of the "LOCTITE 243" (Request by Peru) | NC1355E1a |
| 4. | Separate identification of "wood pellets" in heading 44.01 (Proposal by the UNECE)..... | NC1356E1a |
| 5. | Classification of a milk protein preparation (Request by the EC)... | NC1357E1a |
| 6. | Possible amendment of the Explanatory Note to heading 15.02 ... | NC1358E1a |
| 7. | Classification of protein powder containing flavouring matter (Request by Norway) | NC1359E1a |
| 8. | Classification of a cheese substitute (Request by Argentina) | NC1360E1a |
| 9. | Possible contradiction between the legal terms of heading 12.09 and the Explanatory Note to this heading..... | NC1348E1a |

		NC1312E1a
10.	Use of the expression "mutatis mutandis" in the Explanatory Notes	NC1351E1a
11.	Possible amendment of the Explanatory Notes concerning the "Thiofentanyl"	NC1361E1a
12.	Classification of the "ATON ZN" (Request by Peru)	NC1362E1a
13.	Classification of certain types of monitors (Request by Norway) ...	NC1363E1a
14.	Possible Council Recommendation on the insertion in national statistical nomenclatures of subheadings for certain agricultural products (Request by Japan)	NC1364E1a
15.	Possible amendment of Subheading Note 1 to Chapter 84 (Request by the EC)	NC1365E1a
16.	Classification of a dumper ("6x4 Tipper K5DEF") (Request by Korea).....	NC1366E1a
17.	Classification of three kinds of apparatus for television transmission (Request by Korea).....	NC1367E1a
18.	Study on the possible definition of "articles of luxury" (Request by Mexico).....	NC1368E1a
19.	Possible amendment of Classification Opinion 4811.10/2 (Request by Switzerland).....	NC1369E1a

IX. ADDITIONAL LISTX. OTHER BUSINESS

1.	List of questions which might be examined at a future session	NC1370E1a
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XI. DATES OF NEXT SESSIONS

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, August 6, 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.

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

GENERAL NOTICE

19 CFR PART 177

**PROPOSED MODIFICATION OF RULING LETTER
ALLOWING CONTAINERS CONTAINING RESIDUAL
CHEMICALS TO BE ENTERED AS EMPTY CONTAINERS**

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

ACTION: Notice of proposed modification of a headquarters ruling letter allowing containers containing residual chemicals to be entered as empty containers.

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 modify one ruling letter allowing containers containing residual chemicals to be entered as empty containers. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 19, 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 of the Trade and Commercial Regulations Branch at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Christina Kopitopoulos, Cargo Security, Carriers, and Immigration Branch, at (202) 572-8708.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter allowing containers containing residual chemicals to be entered as empty containers. Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Letter ("HQ") 113129, dated July 12, 1994 (Attachment A), this notice covers any rulings raising this issue which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the containers subject to this notice should advise CBP during this notice period.

In HQ 113129, CBP (then the U.S. Customs Service) held in part that steel containers meeting the requirements of 19 U.S.C. 1322(a)

and 19 CFR 10.41a as instruments of international traffic and filled with a chemical when exported could be entered as empty when imported back into the United States, notwithstanding the residue of chemicals remaining in the containers. It was stated that not only was the residue a very small part of the amount of a full container, but it was virtually impossible to completely empty the containers. The residue was not discarded, rather, more chemicals were added to the containers. Based on our review of HQ 113129, CBP now recognizes that the foregoing holding is inconsistent with CBP's treatment of similar commodities and contrary to CBP's mission in ensuring cargo safety and security.

In order to be consistent with CBP's treatment of similar commodities, such as petroleum slops, and to ensure the safety and security of the transportation of such containers and CBP Officers who examine them, CBP believes that the containers should not be entered, nor manifested, as empty. This position is also in accord with the legislative intent of the advance cargo information reporting requirements authorized pursuant to 19 U.S.C. 2071 note, and the implementing CBP regulations set forth in 19 CFR 4.7, 123.91, and 123.92. Such containers and residual chemicals are subject to the aforementioned reporting requirements.

Petroleum slops, referenced above, is a generic term of the petroleum industry used to describe the pumpable residue crude oil that is washed or scraped from the inside of petroleum cargo tanks on vessels. Since the gross weight (expressed in pounds or kilos) of slops cannot be determined until generated, the weight must be estimated prior to arrival in the U.S., so as to be in compliance with 19 CFR 4.7a. The slops can be manifested as "crude oil residue," "crude oil slops" or other product specific slops. The petroleum slops of foreign origin must also be entered as imported merchandise.

Furthermore, the residual chemicals are covered by the Toxic Substances Control Act (TSCA) under the jurisdiction of the Environmental Protection Agency. As such, the safety of CBP Officers coming in contact with the containers is unnecessarily put at risk if they are under the mistaken impression that the containers are empty.

We note that the ruling requester in HQ 113129 had offered to quantify the amount of chemicals upon importation and enter the chemical residue as American Goods Returned (Chapter 9801, Harmonized Tariff Schedule of the United States ("HTSUS")). We have determined that this is the more accurate procedure for the subject residual chemicals to be entered. Since the exact amount of the residual chemical may not be known at the time the advance cargo information is required to be transmitted, the importer may estimate the amount when providing that information to the carrier for transmitting to CBP. Additionally, the same estimated amount should be used at the time of entry of the chemicals. Of course, if a more pre-

cise amount is obtained after arrival then the entry should be amended. Accordingly, we are issuing HQ H026715 (Attachment B) to reflect the above analysis that the containers with chemical residue should not be entered and manifested as empty, and the chemical residue contained therein should be classified, entered, and manifested.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify HQ 113129 and any other ruling not specifically identified that is contrary to the determination set forth in this notice and HQ H026715 to correctly reflect CBP's position regarding the treatment of containers containing a residue product. Before taking this action, consideration will be given to any written comments timely received.

DATED: August 6, 2008

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

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[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ 113129
July 12, 1994
BOR-4-07-CO:R:IT:C 113129 GOB
CATEGORY: Carriers

ROGER E. GOBROGGE
PATENT ATTORNEY
DOW CORNING CORPORATION
P.O. Box 994
Midland, Michigan 48686-0994

RE: Instruments of International traffic; 19 U.S.C. 1322; 19 CFR 10.41a;
Empty containers

DEAR MR. GOBROGGE

This is in response to your letter dated May 11, 1994. You have also provided additional information to us since that time.

FACTS:

On behalf of Dow Corning, you request a ruling as follows.

You request a ruling that certain items be designated as instruments of international traffic within the meaning of 19 CFR 10.41a. You describe the items as follows: 40 steel containers which are 20 feet by eight feet by eight feet. Some of the containers are stainless steel, others are carbon steel. The containers are used to ship chemicals.

You also request a ruling with respect to the importation of certain residual chemicals in these containers. In your letter of May 11, 1994, you describe the facts thusly:

In a proposed transaction, Dow Corning will fill one of these large containers with a chemical (eg., ethyltrichlorosilane). The filled container will be exported to its subsidiary (eg., in Barry, Wales). The Welsh plant will empty this container and use the chemical therein to produce products. The empty container will be imported back into the United States, cleaned, refilled and re-exported.

...

By virtue of the size of the container, it is nearly impossible to empty it completely. Accordingly, when the container is imported into the United States, it will contain some residual of the original chemical, i.e., it will not be completely empty.

...

We could attempt to quantify the chemical (which would be very difficult from a practical standpoint) and reimport it as returned US goods under HTS 9801.

Alternatively, we could consider the container "empty". Recently, however, Dow Corning discovered that such residuals are covered by the Toxic Substances Control Act (TSCA). As such, there would appear to be an inconsistency in attaching a TSCA certificate to an "empty" container.

In a letter dated June 20, 1994, you provided the following additional information:

... Each container holds approximately 3600 gallons, although the contents are generally weighed rather than measured in volume.

... The residual in these tanks is generally about 50 gallons [approximately 1.4 percent of the amount when the container is filled], although this can vary over a wide range.

... The residual in these containers is generally not discarded (unless the tank is to be repaired). Rather, additional chemicals are merely added to the tank.

ISSUES:

1. Whether the subject items may be designated as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a.
2. The appropriate manner in which to enter the containers which contain residual chemicals.

LAW AND ANALYSIS:

19 U.S.C. 1322(a) states in part:

Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.

The Customs Regulations issued under the authority of 19 U.S.C 1322 are contained in 19 CFR 10.41a. 19 CFR 10.41a(a)(1) designates lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics as instruments for international traffic.

19 CFR 10.41a(a)(1) also authorizes the Commissioner of Customs to designate as instruments of international traffic such additional articles or classes of articles as he shall find should be so designated. Instruments so designated may be released without entry or the payment of duty, subject to the provisions of 19 CFR 10.41a.

To qualify as an instrument of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a, an article must be used as a container or holder; the article must be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic. See Headquarters decisions 108084, 108658, 109665, and 109702.

After a review of the information submitted, we determine that the steel containers meet the requirements to be designated as instruments of international traffic.

We also determine that under the facts described supra, the containers which contain a residue of chemicals may be entered as empty. This determination is limited to the facts of this case, including the fact that the residue is a very small part of the amount of a full container (approximately 1.4 percent) and the fact that the residue remains in the container because it is virtually impossible to completely empty the container.

As we informed you telephonically, we are unable to express any opinion with respect to any requirements of the laws and regulations administered by the Environmental Protection Agency.

HOLDINGS:

1. The subject steel containers are designated as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a.

2. Under the facts of this case, the steel containers may be entered as empty containers.

ARTHUR P. SCHIFFLIN
Chief,
Carrier Rulings Branch.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H026715
RR:BSTC:CCI H026715 CK
CATEGORY: Carriers

ROGER E. GOBROGGE
PATENT ATTORNEY
DOW CORNING CORPORATION
P.O. Box 994
Midland, Michigan 48686-0994

RE: Instruments of International traffic; 19 U.S.C. 1322; 19 CFR 10.41a;
Entry and manifesting of containers

DEAR MR. GOBROGGE:

This is in regard to ruling letter HQ 113129, dated May 11, 1994, in which we held that the containers at issue containing residual chemicals therein were "instruments of international traffic" and should be entered as empty.

We have reconsidered our position that the containers should be entered as empty and we are thus informing you we are modifying our position as to this holding.

FACTS:

In your letters of May 11, 1994 and June 20, 1994, on behalf of Dow Corning, you requested a ruling that certain items be designated as instruments of international traffic within the meaning of 19 CFR 10.41a. You describe the items as follows: 40 steel containers which are 20 feet by eight feet by eight feet. Some of the containers are stainless steel, others are carbon steel. The containers are used to ship chemicals. You also request a ruling with respect to the importation of certain residual chemicals in these containers.

You describe the facts thusly:

In a proposed transaction, Dow Corning will fill one of these large containers with a chemical (eg., ethyltrichlorosilane). The filled container will be exported to its subsidiary (eg., in Barry, Wales). The Welsh plant will empty this container and use the chemical therein to produce products. The empty container will be imported back into the United States, cleaned, refilled and re-exported.

...

By virtue of the size of the container, it is nearly impossible to empty it completely. Accordingly, when the container is imported into the United States, it will contain some residual of the original chemical, i.e., it will not be completely empty.

...

We could attempt to quantify the chemical (which would be very difficult from a practical standpoint) and reimport it as returned US goods under HTS 9801.

Alternatively, we could consider the container "empty". Recently, however, Dow Corning discovered that such residuals are covered by the Toxic Substances Control Act (TSCA). As such, there would appear to be an inconsistency in attaching a TSCA certificate to an "empty" container.

... Each container holds approximately 3600 gallons, although the contents are generally weighed rather than measured in volume.

... The residual in these tanks is generally about 50 gallons [approximately 1.4 percent of the amount when the container is filled], although this can vary over a wide range.

... The residual in these containers is generally not discarded (unless the tank is to be repaired). Rather, additional chemicals are merely added to the tank.

ISSUES:

1. Whether the subject items may be designated as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a.
2. The appropriate manner in which to enter the containers which contain residual chemicals.

LAW AND ANALYSIS:

19 U.S.C. 1322(a) states in part:

Vehicles and other instruments of international traffic, of any class specified by the Secretary . . . , shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary . . .

The Customs and Border Protection (“CBP”) regulations issued under the authority of 19 U.S.C 1322 are contained in 19 CFR 10.41a. Section 10.41a(a)(1) designates lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics as instruments for international traffic.

Section 10.41a(a)(1) also authorizes the Commissioner of CBP to designate as instruments of international traffic such additional articles or classes of articles as he shall find should be so designated. Instruments so designated may be released without entry or the payment of duty, subject to the provisions of 19 CFR 10.41a.

To qualify as an instrument of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a, an article must be used as a container or holder; the article must be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic. See Headquarters decisions 108084, 108658, 109665, and 109702.

After a review of the information submitted, we determine that the steel containers meet the requirements to be designated as instruments of international traffic.

In order to be consistent with CBP’s treatment of similar commodities, such as petroleum slops, and to ensure the safety and security of the transportation of such containers, CBP believes that these containers should not be entered, nor manifested as empty. Furthermore, the chemical residue within the containers should be classified, entered and manifested. This position is in furtherance of the advance cargo information reporting requirements authorized pursuant to 19 U.S.C. 2071 note, and the implementing CBP regulations set forth in 19 CFR 4.7, 123.91, and 123.92. Such containers and the residual chemicals contained therein are subject to the aforementioned requirements.

Furthermore, you state that the residual chemicals are covered by the Toxic Substances Control Act (TSCA) under the jurisdiction of the Environmental Protection Agency. As such, the safety of CBP Officers coming in contact with the containers is unnecessarily put at risk if they are under the mistaken impression that the containers are empty.

With respect to the residual chemicals under consideration, in your letter of May 11, 1994, you offered to quantify the amount of chemicals upon importation and enter the chemical residue as American Goods Returned (Chapter 9801, Harmonized Tariff Schedule of the United States (“HTSUS”). We have determined that this is the more accurate procedure for the residual chemicals to be entered. Since, the exact amount of the residual chemical may not be known at the time the advance cargo information is required to be transmitted, the importer may estimate the amount when providing that information to the carrier for reporting to CBP. Additionally, the same estimated amount should be used at the time of entry of the chemicals. Of course, if a more precise amount is obtained after arrival then the entry should be amended.

HOLDINGS:

1. The subject steel containers are designated as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a.

2. The subject steel containers may not be manifested, and entered, as empty containers. Furthermore, the chemical residue within the containers should be classified, entered, and manifested.

GLEN E. VEREB,
Chief,
Cargo Security, Carriers & Immigration Branch.