

# U.S. Customs and Border Protection

## *CBP Decisions*

**DEPARTMENT OF THE TREASURY**

**19 CFR Part 141**

**Docket No. USCBP-2008-0062**

**RIN 1505-AB96**

**CBP Dec. 08-31**

### **FIRST SALE DECLARATION REQUIREMENT**

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

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

**SUMMARY:** This document establishes an importer declaration requirement pursuant to section 15422(a) of the Food, Conservation, and Energy Act of 2008 to assist Customs and Border Protection (CBP) in gathering information for all goods entered for consumption or withdrawn from warehouse for consumption on the transaction valuation of goods imported into the United States. Effective for a one-year period beginning August 20, 2008, all importers will be required to provide a declaration to CBP at the time of filing a consumption entry when, in a series of sequential sales, the transaction value of the imported merchandise is determined on the basis of the “first or earlier sale” of goods — the first sale in which the goods are “sold for exportation to the United States” or any other sale earlier than the last sale prior to the introduction of the merchandise into the United States. CBP will then report the frequency of the use of the “first sale” rule and other associated data to the International Trade Commission (ITC) on a monthly basis.

**DATES:** This interim rule is effective on August 20, 2008. Comments must be received on or before October 24, 2008.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP-2008-0062.
- Mail: Trade and Commercial Regulations Branch, 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 also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of International Trade, Regulations and Rulings, Customs and Border Protection, 799 9th Street, N.W. (5th Floor), Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Monika Brenner, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 572-8835.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation**

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

##### **BACKGROUND**

The value of merchandise imported into the United States is determined primarily under transaction value which the U.S. value law, set forth in 19 U.S.C. 1401a, defines as “the price actually paid or payable for the merchandise when sold for exportation to the United States” plus specified additions to that amount. 19 U.S.C.

1401a(b)(1). The phrase “sold for exportation to the United States” is not defined in 19 U.S.C. 1401a, nor in the implementing regulations set forth in part 152 of title 19 of the Code of Federal Regulations (19 CFR part 152).

*Notice of Proposed Interpretation*

On January 24, 2008, CBP published in the Federal Register (73 FR 4254) a notice informing interested parties that CBP proposed a new interpretation of the expression “sold for exportation to the United States” for purposes of applying the transaction value method of valuation in a series of sales importation scenario. Under this proposed new interpretation in a transaction involving a series of sales, the price paid in the last sale occurring prior to the introduction of the goods into the United States, instead of an earlier sale, would be considered the price actually paid or payable for the imported goods when sold for exportation to the United States. CBP is withdrawing the notice of proposed interpretation.

*Food, Conservation, and Energy Act of 2008*

On May 22, 2008, Congress passed the Food, Conservation, and Energy Act of 2008 (the “Act”), Pub. L. 110–234, 122 Stat. 1547 (19 U.S.C. 1484 note). Section 15422 of the Act, in pertinent part, requires:

- CBP must collect a declaration as to whether the transaction value of the imported merchandise is determined on the basis of the price paid in the first or earlier sale occurring prior to the introduction of the merchandise into the United States.
- CBP must provide the collected information to the ITC on a monthly basis.
- ITC must submit a report to the House Ways and Means Committee and the Senate Finance Committee within 90 days of receipt of CBP’s final monthly report.
- A “sense of Congress” provision advises that CBP not amend its interpretation of “sold for exportation to the United States” for purposes of applying the transaction value of the imported merchandise in a series of sales before January 1, 2011. Beginning on January 1, 2011, CBP may propose to change its interpretation only if CBP: (1) consults with and provides notice to the committees noted above not less than 180 days prior to proposing a change and not less than 90 days prior to publishing a change; (2) consults with, provides notice to, and takes into consideration views expressed by the Commercial Operations Advisory Committee not less than 120 days prior to proposing a change and not less than 60 days prior to publishing a change; and (3) receives the explicit approval of the Secretary of the Treasury prior to pub-

lishing a change. CBP should also take into consideration the ITC report before publishing any change to the expression “sold for exportation to the United States.”

*Required Information on Entry Summary (CBP Form 7501)*

In addition to the entry and entry summary information otherwise required for importation into the United States, as per section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484), the Act obligates CBP to require that a U.S. importer of merchandise provide a declaration at the time of entry of the merchandise on the entry summary form, CBP Form 7501, as to whether the value of the imported merchandise was determined on the basis of the price paid by the buyer in the “first or earlier sale.”

On June 10, 2008, CBP participated in a teleconference call with members of the Trade Support Network (TSN), a group of private-sector trade representatives that provides CBP with input on the development of Customs Modernization projects. Participants in the call discussed various ways to indicate when customs value is based on the “first sale” on CBP Form 7501. Initially, CBP had considered requiring importers to provide three data elements on CBP Form 7501. During the teleconference, CBP agreed with TSN members that requiring importers to provide as few data elements as possible would be the most efficient and least burdensome manner in which to implement the declaration requirement. CBP has concluded, based upon its consultation with the TSN, that it will require importers to provide one data element.

In order to implement the above requirement of the Act, importers will be required to insert a single code on CBP Form 7501 at the line-item level, indicating when first sale was used to determine the value of the imported merchandise. An importer will be required to enter an “F” next to the declared value if the value of the merchandise is based on transaction value, and the transaction value of the merchandise is based on the price paid by the buyer in the “first or earlier sale.” This special indicator code will enable CBP to fulfill its information collection obligation under the Act.

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

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), CBP has determined that it would be impracticable and contrary to the public interest to delay publication of this rule in final form pending an opportunity for public comment and that there is good cause for this interim rule to become effective immediately upon publication. These interim amendments to 19 CFR 141.61(g) conform the regulations to the information collection requirements set forth in section 15422(a) of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, 122 Stat. 1547 (19 U.S.C. 1484 note), which is effective August 20, 2008.

These interim amendments inform the public of the procedures necessary to comply with the statutory requirements. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

#### **REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866**

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, these interim 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 this document are contained in § 141.61(g) (19 CFR 141.61(g)). This information is used by CBP to fulfill its information collection obligations under section 15422(a) of the Food, Conservation, and Energy Act of 2008, Pub. L. 110–234, 122 Stat. 1547 (19 U.S.C. 1484 note), which mandates that CBP require a U.S. importer of merchandise to provide information at the time of entry of the merchandise on the entry summary form, CBP Form 7501, as to whether the value of the imported merchandise was determined on the basis of the price paid by the buyer in the “first or earlier sale.” The likely respondents are business organizations including importers and brokers. 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 control number assigned by OMB. This collection of information falls under the previously approved collection 1651–0022 for the Entry Summary, CBP Form 7501.

#### **SIGNING AUTHORITY**

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

#### **LIST OF SUBJECTS IN 19 CFR Part 141**

Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

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

For the reasons stated above, part 141 of title 19 of the Code of Federal Regulations (19 CFR part 141) is amended as set forth below.

**PART 141 — ENTRY OF MERCHANDISE**

1. The general authority citation for part 141 continues to read, and the specific authority for § 141.16 is added, to read as follows:

**AUTHORITY:** 19 U.S.C. 66, 1448, 1484, 1624.

\* \* \* \* \*

Section 141.61 also issued under sec. 15422(a), Pub. L. 110-234, 122 Stat. 1547 (19 U.S.C. 1484 note) and 19 U.S.C. 1401a.

\* \* \* \* \*

2. Section 141.61 is amended by adding a new paragraph (g) as follows:

**§ 141.61 Completion of entry and entry summary documentation.**

\* \* \* \* \*

(g) *Declaration of value.* Pursuant to section 15422(a) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-234), for all goods entered for consumption or withdrawn from warehouse for consumption from August 20, 2008 through August 19, 2009, an importer of merchandise must enter an “F” next to the declared value on CBP Form 7501, or the electronic filing equivalent, when the declared transaction value of the imported merchandise is determined on the basis of the price paid by the buyer in a sale occurring earlier than the last sale prior to the introduction of the merchandise into the United States.

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

Approved: August 20, 2008

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

[Published in the Federal Register, August 25, 2008 (73 FR xxxx)]

**DEPARTMENT OF THE TREASURY****Docket No. USCBP-2008-0052****19 CFR PART 12****CBP Dec. 08-32****RIN 1505-AB98****ENTRY REQUIREMENTS FOR CERTAIN SOFTWOOD  
LUMBER PRODUCTS EXPORTED FROM ANY COUNTRY  
INTO THE UNITED STATES**

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

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

**SUMMARY:** This document sets forth interim amendments to title 19 of the Code of Federal Regulations (CFR) that prescribe special entry requirements applicable to certain softwood lumber and softwood lumber products exported from any country into the United States. The softwood lumber and softwood lumber products subject to these interim entry requirements are those described in section 804(a) within Title VIII (Softwood Lumber Act of 2008 or “the Act”) of the Tariff Act of 1930, as added by section 3301 of Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, enacted June 18, 2008). Within Title VIII, section 803 requires the President to establish and maintain an importer declaration program with respect to the importation of certain softwood lumber and softwood lumber products and prescribes special entry requirements whereby importers must submit the export price, estimated export charge, if any, and an importer declaration with the entry summary. There are also new recordkeeping requirements applicable to certain imports of softwood lumber home packages and kits which are subject to declaration requirements, but which are not subject to the softwood lumber importer declaration program of section 803 of the Act. These interim amendments set forth the procedural and documentation requirements necessary to implement the entry requirements specified in the statute.

**DATE:** This interim rule is effective on September 18, 2008. Comments must be received on or before [insert date 60 days after date of publication in the **Federal Register**].

**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 No. USCBP 2008–0052.
- 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, Office of International Trade, 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:** Joseph M. Rees, Director, Trade Agreements and Communications Division, Office of International Trade, Tel: (202) 863–6065.

**SUPPLEMENTARY INFORMATION:**

**Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

**Background**

I. Softwood Lumber Act of 2008: Importer Declaration Program

Section 3301, within Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246) was enacted June 18, 2008, and amends the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*)

by adding a new Title VIII, entitled the “Softwood Lumber Act of 2008” (“the Act”). The Act requires the President to establish and maintain an importer declaration program with respect to the importation of certain softwood lumber and softwood lumber products and prescribes special entry requirements whereby importers must provide the export price, estimated export charge, if any, and an importer declaration with the entry summary documentation. The Act also imposes new recordkeeping requirements applicable to certain imports of softwood lumber home packages and kits.

Title VIII is comprised of sections 801 through 809, which set forth the components of the softwood lumber importer declaration program. These sections, in pertinent part:

- Define certain terms and phrases applicable to the program (section 802).
- Prescribe entry requirements and the establishment of an electronic record thereof (section 803).
- Establish the scope of the program and require the importer to retain and produce documentation pertaining to the entry of certain softwood lumber home packages and kits (section 804).
- Require the Department of Commerce to make monthly determinations as to export charges to be collected by a country of export from exporters of covered softwood lumber products to ensure compliance with any international agreements entered into by that country and the United States (section 805).
- Require the Secretary of the Treasury to conduct reconciliations to ensure the proper implementation and operation of international agreements entered into between a country of export of softwood lumber or softwood lumber products described in section 804(a) and the United States. The Secretary will reconcile: (1) the export price declared by a United States importer pursuant to section 803(b)(1) with the export price reported to the United States by the country of export, if any; and (2) the export price declared by a United States importer pursuant to section 803(b)(1) with the revised export price reported to the United States by the country of export, if any (section 806).
- Require the Secretary of the Treasury to periodically verify the declarations made by a United States importer pursuant to section 803(c), including a determination as to whether the export price declared by a United States importer is the same as the export price provided on the export permit, if any, issued by the country of export and whether the estimated ex-

port charge declared by a United States importer pursuant to section 803(b)(2) is consistent with the determination published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805(b) (section 807).

- Prescribe applicable penalties (section 808).
- Require the submission of congressional reports by various government entities (section 809).

## II. Softwood Lumber Act of 2008: Entry Requirements

Section 803 requires importers of covered softwood lumber and softwood lumber products (*i.e.*, those products described in section 804(a) of the Act) to submit to CBP certain data with the entry summary. The required entry information consists of:

- The export price for each line of softwood lumber or softwood lumber products (as defined in section 802(5));
- The estimated export charge, if any, applicable to each line of softwood lumber or softwood lumber products as calculated by applying the percentage determined and published by the Under Secretary for International Trade of the Department of Commerce, pursuant to section 805, to the export price; and
- An importer declaration that verifies that “the person has made appropriate inquiry, including seeking appropriate documentation from the exporter and consulting the determinations published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805(b)” and, to the best of the person’s knowledge and belief, the export price provided is determined in accordance with the definition set forth in section 802(5), the export price provided is consistent with the export price provided on the export permit, if any, granted by the country of export, and the exporter has paid, or committed to pay, all export charges due in accordance with the volume, export price, and export charge rate or rates, if any, as calculated under an international agreement entered into by the country of export and the United States and consistent with the export charge determinations published by the Under Secretary for International Trade of the Department of Commerce.

## III. Description of Softwood Lumber and Softwood Lumber Products Covered by the Softwood Lumber Act of 2008

Section 804 of the Act sets forth the scope of softwood lumber and softwood lumber products covered by the importer declaration program established under section 803. All softwood lumber and softwood lumber products classified under subheading 4407.10.00,

4409.10.10, 4409.10.20, or 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTSUS) are subject to the importer declaration program established under section 803 including the following softwood lumber, flooring, and siding:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded, or finger-jointed, of a thickness exceeding 6 millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed;

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed; and

(5) Coniferous drilled and notched lumber and angle cut lumber.

In addition, any product classified under subheading 4409.10.05 of the HTSUS that is continually shaped along its end or side edges, and unless excepted or excluded from the declaration requirement, softwood lumber products that are stringers, radius-cut box-spring frame components, fence pickets, truss components, pallet components, and door and window frame parts classified under subheading 4418.90.46.95, 4421.90.70.40, or 4421.90.97.40 of the HTSUS are covered by the Act.

The following products are not subject to the importer declaration program established under section 803 because they are defined as excluded from the program:

(1) Trusses and truss kits, properly classified under subheading 4418.90 of the HTSUS;

(2) I-joist beams;

(3) Assembled box-spring frames;

(4) Pallets and pallet kits, properly classified under subheading 4415.20 of HTSUS;

(5) Garage doors;

(6) Edge-glued wood, properly classified under subheading 4421.90.97.40 of the HTSUS;

(7) Complete door frames;

(8) Complete window frames;

(9) Furniture;

(10) Articles brought into the United States temporarily and for which an exemption from duty is claimed under subchapter XIII of chapter 98 of the HTSUS; and

(11) Household and personal effects.

Also, the following softwood lumber products are not subject to the importer declaration program established under section 803 because they are defined as excepted from the program:

(1) Stringers (pallet components used for runners), if the stringers have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades; and are properly classified under subheading 4421.90.97.40 of the HTSUS;

(2) Box-spring frame kits, if the kits contain two wooden side rails; two wooden end (or top) rails; and varying numbers of wooden slats; and the side rails and the end rails are radius-cut at both ends. Box spring frame kits must be individually packaged, and contain the exact number of wooden components needed to make the box-spring frame described on the entry documents, with no further processing required. None of the components contained in the package may exceed one inch in actual thickness or 83 inches in length.

(3) Radius-cut box-spring frame components, not exceeding one inch in actual thickness or 83 inches in length, ready for assembly without further processing, if radius cuts are present on both ends of the boards and are substantial cuts so as to completely round one corner.

(4) Fence pickets requiring no further processing and properly classified under subheading 4421.90.70 of the HTSUS, one inch or less in actual thickness, up to eight inches wide, and six feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets (in the case of dog-eared fence pickets, the corners of the boards shall be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring  $\frac{3}{4}$  of an inch or more).

(5) Lumber originating in the United States that is exported to another country for minor processing and imported into the United States if the processing occurring in another country is limited to kiln drying, planing to create smooth-to-size board, and sanding; and the importer establishes to CBP's satisfaction upon entry that the lumber originated in the United States.

(6) Any softwood lumber or softwood lumber product that originated in the United States, if the importer, exporter, foreign processor, or original United States producer establishes to CBP's satisfaction upon entry that the softwood lumber entered and documented as originating in the United States was first produced in the United States; and

(7) Softwood lumber or softwood lumber products contained in a single family home package or kit, regardless of the classification under the HTSUS, if the importer declares that the following re-

quirements have been met: (i) The package or kit constitutes a full package of the number of wooden pieces specified in the plan, design, or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design, or blueprint. (ii) The package or kit contains all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, and connectors; and if included in the purchase contract, the decking, trim, drywall, and roof shingles specified in the plan, design, or blueprint; (iii) prior to importation, the package or kit is sold to a United States retailer that sells complete home packages or kits pursuant to a valid purchase contract referencing the particular home design, plan, or blueprint, and the contract is signed by a customer not affiliated with the importer; and (iv) softwood lumber products entered as part of the package or kit, whether in a single entry or multiple entries on multiple days, are to be used solely for the construction of the single family home specified by the home design, plan, or blueprint matching the CBP import entry.

For each entry of softwood lumber products contained in a single family home package for which the importer declares that these four requirements are met, the importer must retain and make available to CBP upon request the following documentation:

- (1) A copy of the appropriate home design, plan, or blueprint matching the customs entry in the United States;
- (2) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- (3) A listing of all parts in the package or kit being entered into the United States that conforms to the home design, plan, or blueprint for which such parts are being imported; and
- (4) If a single contract involves multiple entries, an identification of all the items required to be listed under item (3) that are included in each individual shipment.

#### IV. Interim Amendments at 19 CFR 12.142 to Promulgate Softwood Lumber Importer Declaration Program

In accordance with the Act's requirements, this document makes interim amendments to part 12 of title 19 of the CFR to provide an appropriate regulatory basis with respect to shipments of softwood lumber and softwood lumber products for the collection of export price, estimated export charge, if any, importer declaration and, if applicable, softwood lumber home packages and kits documentation.

The interim amendments to 19 CFR part 12 set forth in this document add a new § 12.142 (19 CFR 12.142) which requires the importer to electronically transmit the export price, the estimated export charge, if any, and the importer declaration on the entry summary in any case in which softwood lumber or softwood lumber products described in section 804(a) of the Act are imported into the United States (entries of softwood lumber and softwood lumber prod-

ucts for which a Certificate of Origin has been issued from Canada's Maritime Lumber Bureau must be submitted to CBP in paper. See 19 CFR 12.140(c). The new interim amendment also requires importers of softwood lumber home packages and kits described in section 804(c)(7)(A)(i) through (iv) of the Act to retain, and provide to CBP upon request, certain documentation pertaining to, *inter alia*, design plans, purchase contracts, and part listings.

It is noted that section 803(b)(1) and (2) of the Act require that information regarding the export price and estimated export charge be submitted for "each shipment." Accordingly, the interim amendment requires that the requisite information associated with each shipment be included on a single line on the entry summary.

#### V. Recordkeeping Requirements

Any substantiating documentation that supports an importer's softwood lumber declaration, and copies of the softwood lumber home packages and kits documentation, are subject to the recordkeeping provisions set forth in part 163 of title 19 to the CFR.

The "List of Records Required for the Entry of Merchandise" set forth in the Appendix to part 163 of title 19 of the CFR (19 CFR part 163) is amended by this document to include the softwood lumber home packages and kits documentation requirement mandated by the Act, as well as any substantiating documentation that supports an importer's softwood lumber declaration. This document amends section IV of the Appendix by adding a new § 12.142 that lists softwood lumber home packages and kits documentation and any substantiating documentation that supports an importer's softwood lumber importer declaration as new entry records.

#### VI. Penalties

Failure to timely provide the required softwood lumber entry data will constitute a breach of the terms of the importer's bond under § 113.62(b) of title 19 of the CFR (19 CFR 113.62) and could give rise to a claim for liquidated damages under the bond equal to the value of the merchandise involved in the default.

#### VII. Other Applicable Entry Requirements

The softwood lumber entry data elements required by these interim regulations are not otherwise collected by CBP at time of entry and are in addition to the entry and entry summary information otherwise required for importation into the United States as per section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484).

In addition, imports of softwood lumber or softwood lumber products from Canada may also be subject to § 12.140 of title 19 to the Code of Federal Regulations (19 CFR 12.140), which sets forth the entry requirements prescribed by the Softwood Lumber Agreement

entered into between the Governments of the United States and Canada on September 12, 2006 (“SLA 2006”). In this regard, it is also noted that even those importers of softwood lumber and softwood lumber products that are exempt from the terms of 19 CFR 12.140 remain subject to the softwood lumber entry requirements contained in 19 CFR 12.142.

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

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), CBP has determined that it would be impracticable and contrary to the public interest to delay publication of this rule in final form pending an opportunity for public comment and that there is good cause for this interim rule to become effective upon providing less than 30 days notice. These interim amendments conform the regulations to the entry requirements set forth in Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), which go into effect August 18, 2008, and inform the public of the procedures necessary to comply with the statutory requirements. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a 30-day delayed effective date.

### **Regulatory Flexibility Act and Executive Order 12866**

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, these 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 this document are contained in § 12.142(c) and (d) (19 CFR 12.142(c) and (d)). This information is used by CBP to fulfill its information collection obligations under Title VIII of the Tariff Act of 1930, as added by section 3301 within Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246), whereby importers of certain softwood lumber and softwood lumber products are required to submit the export price, estimated export charge, if any, and an importer declaration with the entry summary information or, where applicable, to submit additional documentation required for home packages and kits. The likely respondents are business organizations including importers and brokers.

The collection of information associated with the entry summary documentation (CBP Form 7501) was previously approved by the Office of Management and Budget under control number 1651–0052. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C.

3507), CBP has submitted to OMB for review the following adjustments to the information provided to OMB for the previously approved OMB control number to account for the changes in this interim rule. 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 control number assigned by OMB.

Estimated annual reporting and/or recordkeeping burden: 266,000 hours.

Number of responses per respondent and/or recordkeeper: 1,905.

Estimated number of respondents and/or recordkeepers: 210.

Estimated annual frequency of responses: 400,000.

Estimated time per response: 40 minutes (.333 hours).

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 1300 Pennsylvania Avenue, N.W. (Mint Annex), Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim rule.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

### **Signing Authority**

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

### **List of Subjects**

#### **19 CFR Part 12**

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

#### **19 CFR Part 163**

Customs duties and inspection, Reporting and recordkeeping requirements.

### Amendment to the Regulations

For the reasons stated above, parts 12 and 163 of title 19 of the Code of Federal Regulations (19 CFR Parts 12 and 163) are amended as set forth below.

#### PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues and a new specific authority for § 12.142 is added to read in part as follows:

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

\* \* \* \* \*

§ 12.142 also issued under 19 U.S.C. 1484; section 3301 of Pub. L. 110–246.

\* \* \* \* \*

2. The center heading “Softwood Lumber from Canada” located above § 12.140 is amended by removing the words “from Canada”.

3. A new § 12.142 is added to read as follows:

#### **§ 12.142 Entry of softwood lumber and softwood lumber products from any country into the United States.**

(a) In general. This section, pursuant to the “Softwood Lumber Act of 2008” (“the Act”) (Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 et seq.)), prescribes entry requirements applicable to certain imports of softwood lumber and softwood lumber products exported from any country into the United States.

(b) Softwood lumber products covered. The softwood lumber and softwood lumber products covered by this section are those products described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 et seq.).

(c) Entry requirements for shipments subject to the importer declaration program. For each shipment of softwood lumber or softwood lumber products described in section 804(a) of Title VIII to the Tariff Act of 1930, as amended, (19 U.S.C. 1202 et seq.) that is entered or withdrawn from warehouse for consumption, in the customs territory of the United States, the following information must be electronically submitted to CBP (except that, pursuant to 19 CFR 12.140(c), entries of softwood lumber and softwood lumber products for which a Certificate of Origin has been issued from Canada’s Maritime Lumber Bureau must be submitted to CBP in paper):

(1) Export price. Each importer must provide the export price, expressed in U.S. dollars, on the entry summary in the designated space provided on the CBP Form 7501.

(i) For purposes of this section, “export price” means one of the following:

(A) In the case of softwood lumber or a softwood lumber product that has undergone only primary processing, the value that would be determined F.O.B. at the facility where the product underwent the last primary processing before export.

(B) In the case of softwood lumber or a softwood lumber product that underwent the last remanufacturing before export by a manufacturer who does not hold tenure rights provided by the country of export, did not acquire standing timber directly from the country of export, and is not related to the person who holds tenure rights or acquired standing timber directly from the country of export, the value that would be determined F.O.B. at the facility where the softwood lumber or softwood lumber product underwent the last primary processing.

(C) In the case of softwood lumber or a softwood lumber product that underwent the last remanufacturing before export by a manufacturer who holds tenure rights provided by the country of export, acquired standing timber directly from the country of export, or is related to the person who holds tenure rights or acquired standing timber directly from the country of export, the value that would be determined F.O.B. at the facility where the softwood lumber or softwood lumber product underwent the last processing before export.

(D) In the case of softwood lumber or a softwood lumber product described in paragraphs (c)(1)(i)(A), (B) or (C) of this section for which an F.O.B. value cannot be determined, the export price will be the market price for the identical softwood lumber or softwood lumber product sold in an arm’s-length transaction in the country of export at approximately the same time as the exported softwood lumber or softwood lumber product. The market price will be determined in the following order of preference:

(1) The market price for the softwood lumber or softwood lumber product sold at substantially the same level of trade (as described in 19 CFR 351.412(c)) as the exported softwood lumber or softwood lumber product but in different quantities.

(2) The market price for the softwood lumber or softwood lumber product sold at a different level of trade (as defined in 19 CFR 351.412(c)) than the exported softwood lumber or softwood lumber product but in similar quantities.

(3) The market price for the softwood lumber or softwood lumber product sold at a different level of trade (as defined in 19 CFR 351.412(c)) than the exported softwood lumber or softwood lumber product and in different quantities.

(ii) For purposes of paragraph (c)(1) of this section, the following definitions apply:

(A) F.O.B.. The term “F.O.B.” means a value consisting of all charges payable by a purchaser, including those charges incurred in the placement of merchandise on board of a conveyance for shipment, but does not include the actual shipping charges or any applicable export charges.

(B) Related to the person. The term “related to the person” means:

(1) A person bears a relationship to such other person described in section 152(a) of the Internal Revenue Code of 1986;

(2) A person bears a relationship to such person described in section 267(b) of the Internal Revenue Code of 1986, except that “5 percent” will be substituted for “50 percent” each place it appears;

(3) The person and such other person are part of a controlled group of corporations, as that term is defined in section 1563(a) of the Internal Revenue Code of 1986, except that “5 percent” will be substituted for “80 percent” each place it appears;

(4) The person is an officer or director of such other person; or

(5) The person is the employer of such other person.

(C) Tenure rights. The term “tenure rights” means rights to harvest timber from public land granted by the country of export.

(2) Estimated export charge. (i) Each importer must provide the estimated export charge, if any, to be collected by the country (including any political subdivision of the country) from which the softwood lumber or softwood lumber product was exported pursuant to an international agreement entered into by that country and the United States as calculated by applying the percentage determined and published by the Under Secretary for International Trade of the Department of Commerce to the export price. Any applicable estimated export charge must be expressed in U.S. dollars and reported on the entry summary in the designated space.

(ii) For purposes of this paragraph, the terms “estimated export charge” or “export charge” mean any tax, charge, or other fee collected by the country from which softwood lumber or a softwood lumber product, as described in section 804(a) within Title VIII of the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*), as amended, is exported pursuant to an international agreement entered into by that country and the United States.

(3) Importer declaration. (i) Each importer, except as provided in paragraph (c)(3)(ii) of this section, must provide a softwood lumber declaration on the electronic entry summary by entering the letter code “Y” in the first space of the field designated for the estimated export charge data.

(ii) Each importer of softwood lumber and softwood lumber products for which a Certificate of Origin has been issued from Canada's Maritime Lumber Bureau must provide a softwood lumber declaration on the paper entry summary by entering the letter code "Y" in the first space of the field designated for the estimated export charge. See 19 CFR 12.140(c),

(iii) The letter code "Y" represents the importer's declaration to CBP that:

(A) The importer has made appropriate inquiry, including seeking appropriate documentation from the exporter and consulting the determinations published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805(b) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 et seq.); and

(B) To the best of the person's knowledge and belief:

(1) The export price provided is determined in accordance with the definition set forth in section 802(5) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 et seq.);

(2) The export price provided is consistent with the export price provided on the export permit, if any, granted by the country of export; and

(3) The exporter has paid, or committed to pay, all export charges due in accordance with the volume, export price, and export charge rate or rates, if any, as calculated under an international agreement entered into by the country of export and the United States and consistent with the export charge determinations published by the Under Secretary for International Trade of the Department of Commerce.

(iv) Any substantiating documentation that supports an importer's softwood lumber declaration is subject to the recordkeeping provisions set forth in part 163 of title 19 to the CFR.

(d) Entry requirements for home packages and kits. (1) Declaration and required documentation. Home packages and kits as described in section 804(c)(7)(A)(i) through (iv) of the Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 et seq.) are not subject to the entry requirements set forth in paragraph (c) of this section. However, the importer is required to make a declaration pursuant to section 804(c)(7)(B) and is required to retain and produce upon demand by CBP, the following documentation:

(i) A copy of the appropriate home design, plan, or blueprint matching the customs entry in the United States.

(ii) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer.

(iii) A listing of all parts in the package or kit being entered into the United States that conforms to the home design, plan, or blueprint for which such parts are being imported.

(iv) If a single contract involved multiple entries, an identification of all the items required to be listed under paragraph (d)(1)(iii) of this section that are included in each individual shipment.

(2) Records and retention. There is no requirement to present physical copies of the softwood lumber home packages and kits documentation to CBP at the time of filing the entry summary; however copies must be maintained in accordance with the applicable recordkeeping provisions set forth in part 163 of title 19 to the CFR.

(e) Other softwood lumber entry requirements. Other entry requirements may be applicable to certain imports of softwood lumber or softwood lumber from Canada. Importers are advised to refer to § 12.140 (19 CFR 12.140) of this chapter for information regarding applicability and entry requirements.

#### **PART 163 — RECORDKEEPING**

4. The authority citation for part 163 continues to read as follows:

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

5. The Appendix to part 163 is amended by adding, in numerical order, a listing for § 12.142 under section IV to read as follows:

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

\* \* \* \* \*

IV. \* \* \*

#### **§ 12.142 Softwood Lumber Importer Declaration Supporting Documentation, Softwood Lumber Home Packages and Kits Documentation.**

\* \* \* \* \*

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

Approved: August 20, 2008

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

[Published in the Federal Register, August 25, 2008 (73 FR xxxx)]

## *General Notices*

### **PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF CERTAIN ICE CREAM WRAPPING MATERIAL**

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

**ACTION:** Notice of proposed revocation of a ruling letter and revocation of treatment relating to the classification of certain ice cream wrapping material composed of layers of paper, aluminum foil, and polyethylene adhered together.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to revoke a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain ice cream wrapping material composed of layers of paper, aluminum foil, and polyethylene adhered together. 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 October 4, 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 is proposing to revoke a ruling letter relating to the tariff classification of certain ice cream wrapping material composed of layers of paper, aluminum foil, and polyethylene adhered together. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 954591, dated August 23, 1993 (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 rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 is proposing 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 HQ 954591, CBP classified certain ice cream wrapping material composed of layers of paper, aluminum foil, and polyethylene adhered together in subheading 7607.20.10, HTSUS, which provides

for: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Backed: Other", by application of GRI 1. Based on our recent review of HQ 954591, we have determined that the tariff classification set forth for the wrapping material is incorrect. It is now CBP's view that the proper tariff classification is subheading 7607.19.60, HTSUS, which provides for: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: Other: Other", by application of GRI 3.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ 954591 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper tariff classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter HQ H034938 (Attachment B). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: August 14, 2008

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

Attachments

Attachment A

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
**HQ 954591**  
August 23, 1993  
CLA-2 CO:R:C:M 954591 DWS  
CATEGORY: Classification  
TARIFF NO.: 7607.20.10

MS. JANET KIM  
UNITED CUSTOMSHOUSE BROKERS, INC.  
5777 W. Century Boulevard, Suite 510  
Los Angeles, CA 90045

RE: Ice Cream Wrapping Material; Backed Aluminum Foil; Explanatory Note 76.07; Explanatory Note 74.10

DEAR MS. KIM:

This is in response to your letter of June 18, 1993, on behalf of Young Systems Corp., concerning the classification of ice cream wrapping material under the Harmonized Tariff Schedule of the United States (HTSUS).

## FACTS:

The merchandise consists of ice cream wrapping material. The top layer of the wrapping is a clear sheet of polypropylene with reverse printing on one side. The printed polypropylene layer is then laminated to aluminum foil, which is laminated to paper through the use of an intermediate layer of wet polyethylene. The back of the paper is then coated with a hot melt. The paper and plastic backing adds strength to the aluminum foil facilitating its use as wrapping for ice cream. The finished material has a thickness of 0.075mm.

The subheading under consideration is as follows:

7607.20.10: [a]luminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm: [b]acked: [c]overed or decorated with a character, design, fancy effect or pattern.

The general, column one rate of duty is 3.7 percent ad volarem.

## ISSUE:

Whether the ice cream wrapping material is classifiable under subheading 7607.20.10, HTSUS, as backed aluminum foil?

## LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order.

GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive, are to be used to determine the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory Note 76.07 (p. 1066) states that:

[t]he provisions of the Explanatory Note to heading 74.10 relating to copper foil apply mutatis mutandis, to this heading.

Aluminum foil is used in the manufacture of bottle caps and capsules, for packing foodstuffs, cigars, cigarettes, tobacco, etc. . . (emphasis supplied).

In part, Explanatory Note 74.10 (p. 1048) states that:

[o]ther foil, such as that used for making fancy goods, is often backed with paper, paperboard, plastics or similar backing materials, either for convenience of handling or transport, or in order to facilitate subsequent treatment, etc. . .

It is our position that the ice cream wrapping material is specifically classifiable under subheading 7607.20.10, HTSUS. It is used in the packing of foodstuffs (ice cream), and it is composed of aluminum foil backed with both paper and plastic materials. The backing adds strength to the foil facilitating its use as wrapping for ice cream. The foil has a thickness not exceeding 0.2mm and the material is decorated with printing.

HOLDING:

The ice cream wrapping material is classifiable under subheading 7607.20.10, HTSUS, as backed aluminum foil.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

Attachment B

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H034938  
**CLA-2 OT:RR:CTF:TCM H034938 HkP**  
**CATEGORY:** Classification  
**TARIFF NO.:** 7607.19.60

MS. JANET KIM  
UNITED CUSTOMSHOUSE BROKERS, INC.  
5777 W. Century Blvd. Suite 510  
Los Angeles, CA 90045

**RE:** Revocation of HQ 954591; ice cream wrapping material

DEAR MS. KIM:

This is in reference to Headquarters Ruling Letter ("HQ") 954591, issued to you on August 23, 1993, concerning the classification of ice cream wrapping material under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling the U.S Customs Service, (now "U.S. Customs and Border Protection" ("CBP")) classified the ice cream wrapping material under heading 7607, specifically in subheading 7607.20.10, HTSUS, as "backed" aluminum foil, by application of GRI 1. We have reviewed HQ 954591 and found that this decision is incorrect. For the reasons set forth below, we hereby revoke HQ 954591.

FACTS:

The merchandise at issue is described in HQ 954591 as follows:

The top layer of the wrapping is a clear sheet of polypropylene with reverse printing on one side. The printed polypropylene layer is then laminated to aluminum foil, which is laminated to paper through the use of an intermediate layer of wet polyethylene. The back of the paper is then coated with a hot melt. The paper and plastic backing adds strength to the aluminum foil facilitating its use as wrapping for ice cream. The finished material has a thickness of 0.075 mm.

We have also consulted the original file which contains the following relevant information on the cost breakdown of raw materials, including as percentages of total expenses (approximate figures used):

Oriented polypropylene - \$3/roll (4%)  
7 micron aluminum foil - \$13/roll (18%)  
15 micron wet lamination (polyethylene) - \$1.50/roll (2%)  
25G/sq. meter paper - \$6/roll (8.5%)  
14G/sq. meter hot melt - \$8/roll (11.5%)

Based on our research, "hot melt" is generally described as an adhesive which becomes liquid at high temperatures and reverts to a solid state at normal temperatures. In addition, aluminum foil is generally used in food packaging as a moisture and oxygen transmission barrier to aid in food preservation.

**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:

- 3921** Other plates, sheets, film, foil and strip, of plastics:
- 4811** Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810:
- 7607** Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
- Not backed:
- 7607.19 Other:
- Other:
- 7607.19.60 Other. . . . .
- 7607.20 Backed:
- 7607.20.50 Other . . . . .

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The wrapping at issue is a composite good consisting of layers of coated paper, classified under heading 4811, aluminum foil, classified under heading 7607, and plastic, classified under heading 3921, HTSUS, adhered together. There is no heading that describes this good in its entirety. Therefore, it cannot be classified according to GRI 1. GRI 3(b) directs that composite goods consisting of different materials shall be classified as if they consisted of the material or component which gives them their essential character. EN (VIII) to GRI 3(b) explains that the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in re-

lation to the use of the goods. After examining the wrapping, we find that its essential character is imparted by the aluminum layer, by virtue of its cost and its use in relation to preserving the qualities of the ice cream it is used to wrap. We note that aluminum foil which is combined with another material but that is not backed or coated can only be classified in heading 7607, HTSUS, on the basis of GRI 3 as a composite good.

**HOLDING:**

By application of GRI 3(b), the ice cream wrapping material is classified under heading 7607, HTSUS. It is specifically provided for in subheading 7607.19.60, HTSUS, which provides for: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness not exceeding 0.2 mm: Not backed: Other: Other." The column one, general rate of duty is 3% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

HQ 954591 is hereby revoked.

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

**PROPOSED MODIFICATION OF THE LEGAL ANALYSIS  
CONTAINED IN A RULING LETTER CONCERNING THE  
CLASSIFICATION OF "POLACOLOR FOIL"**

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

ACTION: Notice of proposed modification of the legal analysis contained in a ruling letter relating to the classification of "Polacolor foil", which is composed of polypropylene/aluminum foil/ polypropylene adhered together in layers.

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 a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Polacolor foil, with respect to its legal analysis. CBP is not proposing 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 October 4, 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 modify a ruling letter relating to the tariff classification of Polacolor foil composed of polypropylene/aluminum foil/ polypropylene adhered together in layers, with respect to its legal analysis. Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) 959298, dated May 8, 1998 (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 ones identified. No further rulings have been found. Any party who has re-

ceived 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.

In HQ 959298 CBP classified Polacolor foil in subheading 3921.90.40, HTSUS, using a GRI 3 analysis. However, in our holding, we stated that classification was in accordance with GRI 1. Based on our recent review of HQ 959298, we have determined that the legal analysis set forth for the Polacolor foil in HQ 959298 is incorrect. It is now CBP's position that the subject merchandise is properly classified in subheading 3921.90.40, HTSUS, on the basis of a GRI 1 analysis.

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to modify HQ 959298 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper legal basis on which to classify the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) H034975 (Attachment B). CBP is not proposing to revoke any treatment previously accorded by it to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: August 14, 2008

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

Attachments



Attachment A

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

**HQ 959298**

May 8, 1998

CLA-2 RR:CR:GC 959298 HMC

CATEGORY: Classification

TARIFF NO.: 3921.90.40

PORT DIRECTOR OF CUSTOMS  
*P.O. Box 1490*  
*St. Albans, VT 05478*

RE: Protest 0201-96-100158; Polacolor Foil; Polypropylene/Aluminum/  
Polypropylene Laminate; Subheading 3921.90.40 and 7607.20.50;  
General Explanatory Note to Chapter 39; Explanatory Note 39.21;  
Other plate, sheets, film, foil and strip, of plastics; Aluminum Foil.

DEAR PORT DIRECTOR:

This is our decision on protest 0201-96-100158, filed against your classification of Polacolor foil. The entries under protest were liquidated on March 15, 1996, and this protest timely filed on April 17, 1996.

FACTS:

The merchandise under protest is made of aluminum foil and sandwiched between two laminates of polypropylene. After importation, the Polacolor foil is used to manufacture wrappings for photographic films. Each plastic layer has a thickness of 0.001 inch; the aluminum foil has a thickness of 0.0003 inch. The merchandise was entered under a provision for backed aluminum foil under subheading 7607.20.50 of the Harmonized Tariff Schedule of the United States (HTSUS). However, the entries were liquidated under subheading 3921.90.40, HTSUS, as other plates, sheets, film, foil and strip, or plastics. The provisions under consideration are as follows:

7607 Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:

7607.20 Backed:

7607.20.50 Other . . . Free

\* \* \* \* 3921 Other plates, sheets, film, foil and strip, of plastics:

3921.90 Other:

Other: 3921.90.40 Flexible . . . 4.2%

ISSUE:

Whether the Polacolor foil is classifiable as other plates, sheets, film, foil and strip, of plastics under subheading 3921.90.40, HTSUS, or as other backed aluminum foil under subheading 7607.20.50, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Polacolor foil is made of an aluminum foil sandwiched between two layers of polypropylene. The merchandise is described in part by heading 7607, as aluminum foil, and by heading 3921, as other plates, sheets, film, foil and strip of plastics.

GRI 3(a) states that when two or more heading each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. The Polacolor foil is made up of different components which together form an inseparable whole. Since the Polacolor foil is a composite good, described in part by two different headings, we must apply GRI 3(b) which requires that composite goods are to be classified according to the component which gives the good its essential character.

The Harmonized Commodity Description And Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not

dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Explanatory Note (VIII) to GRI 3(b), at page 4, states that the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

We believe the polypropylene laminates impart the essential character to the Polacolor foil. In **HQ 950705**, dated July 17, 1992, Customs determined that a coffee bag made of a middle layer of aluminum foil with the outer and inner layers made of polyurethane and polyethylene had the essential character of an article of plastic. In that case, Customs found that the aluminum layer was mainly a moisture barrier and did not provide any form of strength to the bag, and that the plastic predominated by weight overwhelmingly. As in the case of the coffee bag, we find that the aluminum foil is used only as a sunlight and moisture barrier and that it does not add significantly to the strength of the wrapping. We believe that the plastic imparts the essential character to the subject merchandise. In accordance with GRI 3(b), the Polacolor foil is classifiable as if made only of polypropylene.

Articles of polypropylene are plastics provided for in Chapter 39, HTSUS. General EN to Chapter 39, HTSUS, states at page 598, that [Chapter 39] covers the following products, whether they have been obtained by a single operation or by a number of successive operations provided that they retain the essential character of articles of plastics:

...

(b) Plates, sheets, etc., of plastics separated by a layer of another material such as metal, foil, paper, paperboard.

Having determined that the Polacolor foil has the essential character of articles of plastics, we find that it is described by heading 3921, as other plates, sheets, film, foil and strip, of plastics. This is supported by the General EN to Chapter 39 and EN 39.21, which state that heading 3921 covers products laminated with another material. The Polacolor foil is therefore classifiable under subheading 3921.90.40, HTSUS, as other plates, sheets, film, foil and strip, of plastics, other, flexible, other.

**HOLDING:**

Under the authority of GRI 1, the Polacolor is classifiable under subheading 3921.90.40, HTSUS, as other plates, sheets, film, foil and strip, of plastics, other, flexible, other. The 1994 rate of duty is 4.2%.

This protest should be **DENIED**.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you should mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via

the Customs Rulings Module in ACS and to the public via the Diskette Subscription Service, the Freedom of Information Act and other public access channels.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

Attachment B

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H034975  
**CLA-2 OT:RR:CTF:TCM H034975 HkP**  
**CATEGORY:** Classification  
**TARIFF NO.:** 3921.90.40

PORT DIRECTOR  
PORT OF ST. ALBANS  
U.S. CUSTOMS AND BORDER PROTECTION  
*50 S. Main Street, Suite 100R*  
*St. Albans, VT 05478*

**RE:** Modification of HQ 959298; Classification of Polacolor foil

DEAR PORT DIRECTOR:

This is in reference to Headquarters Ruling Letter (HQ) 959298, dated May 8, 1998, regarding the classification of an aluminum foil and plastic product, referred to as "Polacolor foil", under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, the U.S. Customs Service (now U.S. Customs and Border Protection ("CBP")) classified Polacolor foil under heading 3921, HTSUS, using an essential character analysis pursuant to GRI 3. However, in our holding, we stated that classification was in accordance with GRI 1. After reviewing HQ 959298 it is now our view that Polacolor foil should have been classified using a GRI 1 analysis. For this reason, we hereby modify HQ 959298 with respect to its legal analysis.

We note that under San Francisco Newspaper Printing Co. v. United States, 9 CIT 517, 620 F. Supp. 738 (1985), the decision on the merchandise which was the subject of Protest 0201-96-100158 was final on both the protestant and CBP. Therefore, while we may review the law and analysis of HQ 959298, any decision taken herein would not impact the entries subject to that ruling.

**FACTS:**

The merchandise at issue was described in HQ 959298 as:

[A]luminum foil sandwiched between two laminates of polypropylene. After importation the Polacolor foil is used to manufacture wrappings for photographic films. Each plastic layer has a thickness of 0.001 [inches]; the aluminum foil has a thickness of 0.003 [inches].

**ISSUE:**

What is the legal basis for classifying Polacolor foil under heading 3921, 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 Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. See T.D. 89-80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The General EN to Chapter 39 provides, in relevant part:

\* \* \*

This Chapter also covers the following products, whether they have been obtained by a single operation or by a number of successive operations **provided** that they retain the essential character of articles of plastics:

\* \* \*

(b) Plates, sheets, etc., of plastics, separated by a layer of another material such as metal foil, paper, paperboard.

EN 39.21 provides, in relevant part:

This heading covers plates, sheets, film, foil and strip, of plastics, **other than** those of **heading 39.18, 39.19 or 39.20** or of **Chapter 54**. It therefore covers only cellular products or those which have been reinforced, laminated, supported or similarly combined with other materials. (For the classification of plates, etc. combined with other materials, see the General Explanatory Note.)

Polacolor foil is a composite good consisting of foil and plastic. Under GRI 1, the expression "other" in the legal text of heading 3921, HTSUS, is to be construed "according to the terms of the headings and any relative section or chapter notes . . . provided such headings or notes do not otherwise require . . ." Accordingly, heading 3921, HTSUS, has to be read in the context of the other headings in which plastic plates, sheets, film, foil and strip can be classified, *i.e.* (in Chapter 39) heading 3918, HTSUS, (Floor coverings of plastics; wall and ceiling coverings of plastics), 3919, HTSUS, (Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics) and 3920, HTSUS, (Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials). Based on the text of these headings, we find that heading 3921, HTSUS, provides for, among other things, plastic film (other than those of heading 3918, 3919, or 3920, HTSUS) combined with other materials. We find, therefore, that composite goods consisting in part of plastic sheets or other forms named in the heading may be classified in heading 3921, HTSUS, on the basis of GRI 1, provided they retain the essential character of articles of plastics. This interpretation of the heading text is supported by the Explanatory Notes to heading 3921, HTSUS. See EN 39.21

and the General EN to Chapter 39, which explains that sheets of plastics separated by a layer of foil are provided for in Chapter 39. The Polacolor foil retains the essential character of articles of plastic.

Based on the foregoing analysis, we find that Polacolor foil is classified under heading 3921, HTSUS, pursuant to GRI 1. Consequently, there is no need to classify the product using GRI 3. We note that neither the heading text nor the relevant Legal Notes provide for composite goods within heading 7607, HTSUS, at the GRI 1 level of classification.

**HOLDING:**

By application of GRI 1, Polacolor foil is classified under heading 3921, HTSUS. It is specifically provided for in subheading 3921.90.40, HTSUS, which provides for: "Other plates, sheets, film, foil and strip, of plastics: Other: Other: Flexible." The column one, general rate of duty is 4.2% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

HQ 959298 is hereby modified with respect to its legal analysis. The classification of the merchandise described therein is unchanged.

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

