

# U.S. Customs and Border Protection



## **AUTOMATED COMMERCIAL ENVIRONMENT (ACE): ANNOUNCEMENT OF A NEW START DATE FOR THE NATIONAL CUSTOMS AUTOMATION PROGRAM TEST OF AUTOMATED MANIFEST CAPABILITIES FOR OCEAN AND RAIL CARRIERS**

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** General notice.

**SUMMARY:** U.S. Customs and Border Protection (CBP) is announcing that the National Customs Automation Program (NCAP) test concerning the transmission of required advance ocean and rail data through the Automated Commercial Environment is scheduled to begin no earlier than August 1, 2011. CBP previously announced that this test would begin no earlier than December 22, 2010. This notice advises the public of the updated timeline for the test and announces that applications are still being accepted.

**DATES:** The test will commence no earlier than August 1, 2011 and will run for no less than 90 days. CBP is currently accepting applications to participate and will continue to accept applications throughout the duration of the test. Selected applicants will be notified by CBP and will then undergo a certification process prior to beginning the test. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

**ADDRESSES:** Applications to participate in the test should be sent to Susan Maskell at *Susan.Maskell@dhs.gov*. Please describe in the body of the e-mail any past electronic data interchange (EDI) history with CBP. Written comments concerning program and policy issues should be sent to *ACEMIPOLICY@cbp.dhs.gov*. Please indicate in the subject line whether the comment relates to ocean carriers, rail carriers, or both.

**FOR FURTHER INFORMATION CONTACT:** Interested parties should direct any questions to their assigned Client Representative. Interested parties without an assigned Client Representative should direct their questions to the Client Representative Branch at 571-468-5500.

## SUPPLEMENTARY INFORMATION:

### Background

Certain ocean and rail data is required to be transmitted in advance of arrival through a CBP-approved electronic data interchange (EDI). The data includes the advance cargo information required by section 343 of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002 (*See* 68 FR 68140, December 5, 2003), and the advance data ocean carriers are required to provide pursuant to the importer security filing and additional carrier requirements interim final rule, commonly known as 10+2 (*See* 73 FR 71730, November 25, 2008).<sup>1</sup> Currently, the Automated Commercial System (ACS) is the CBP-approved EDI through which this required data must be transmitted.

### New Start Date for NCAP Test

On October 20, 2010, CBP issued a **Federal Register** notice announcing a National Customs Automation Program (NCAP) test to allow ocean and rail data to be transmitted through the Automated Commercial Environment (ACE) and scheduled the test to commence no earlier than December 22, 2010. *See* 75 FR 64737. Due to programming delays, the test will begin no earlier than August 1, 2011.

For complete information on the test, including specifics on eligibility criteria, test procedures, and the application process, which is still ongoing, please refer to the October 20, 2010 notice.

### Next Steps

After the successful completion of the test, CBP plans to publish a document in the **Federal Register** announcing that ACE will be the only CBP-approved EDI for transmitting required advance ocean and rail data. CBP plans to provide an appropriate transitional period to allow all affected users adequate time to transition to ACE.

Dated: July 13, 2011.

THOMAS WINKOWSKI,  
*Assistant Commissioner,*  
*Office of Field Operations.*

[Published in the Federal Register, July 19, 2011 (76 FR 42721)]

---

<sup>1</sup> For specific information about the requirements to provide advance cargo information to CBP, please *see* the following sections of title 19 of the Code of Federal Regulations (CFR): 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration; 4.7a Inward manifest; information required; alternative forms; 4.7c Vessel stow plan; 4.7d Container status messages, 123.91 Electronic information for rail cargo required in advance of arrival; and part 149 Importer Security Filing.

## **MODIFICATION OF TWO RULING LETTERS AND REVOCACTION OF TREATMENT RELATING TO THE NAFTA ELIGIBILITY OF REFINED SUGAR**

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

**ACTION:** Notice of modification of two ruling letters and revocation of treatment relating to the NAFTA eligibility of refined sugar.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying two ruling letters relating to the NAFTA eligibility of sugar under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on May 25, 2011, Vol. 45, No. 22 of the *Customs Bulletin*. No comments were received in response to the notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** Karen Greene, Valuation and Special Programs Branch: (202) 325–0041.

### **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, as amended (19 U.S.C. 1625 (c)(1)), notice proposing to modify two ruling letters pertaining to the NAFTA eligibility of sugar was published in the May 25, 2011, Vol. 45, No. 22, of the *Customs Bulletin*. No comments were received.

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

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

In NY N065187 and NY N025726, CBP determined that certain Mexican raw sugar refined in Canada was considered "wholly obtained or produced" entirely in Mexico and therefore, would be a NAFTA originating good and eligible for preferential tariff treatment. We have reviewed the rulings and determined that the NAFTA eligibility issue is not fully explained. It is now CBP's position that the subject refined sugar would be considered a NAFTA originating good because it is wholly obtained or produced entirely in the territory of Canada and Mexico as set forth in GN 12(b)(i).

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N065187 and NY N025726 and any other ruling not specifically identified, in order to reflect the proper interpretation of NAFTA eligibility according to the analysis contained in HQ H131644, set forth as Attachment A and HQ H131645, set forth as attachment B to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 30, 2011

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

Attachments

## [ATTACHMENT A]

HQ H131644

June 30, 2011

OT:RR:CTF:VS H131644 KSG

Ms. NINFA DIMORA-MINES  
PRINCESS STREET  
P.O. Box 1197  
FORT ERIE, ONTARIO  
CANADA  
L2A 5Y2

Re: Modification of New York ruling N065187; NAFTA eligibility; sugar

DEAR Ms. NINFA DIMORA-MINES:

This is in response to your letter dated May 27, 2009, which CBP addressed in New York Ruling N065187, dated July 16, 2009, dealing with imported refined sugar.

**FACTS:**

Mexican-origin raw sugar will be processed at sugar refining facilities in Canada to produce refined cane sugar. The polarity of the sugar is 99.9 degrees and will be packaged in 50 lb. bags and/or 1 metric ton tote bags.

CBP held in NY Ruling N065187, that the cane sugar would be an “originating” good under the North American Free Trade Agreement (“NAFTA”) because it was wholly obtained or produced in Mexico.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice of proposed action was published on May 25, 2011, in the *Customs Bulletin*, Vol. 45, No. 22. No comments were received.

**ISSUE:**

Is the imported refined cane sugar eligible for preferential tariff preference under the North American Free Trade Agreement (“NAFTA”)?

**LAW AND ANALYSIS:**

Pursuant to General Note (“GN”) 12, HTSUS, for an article to be eligible for NAFTA preference, two criteria must be satisfied. First, the article in question must be “originating” under the terms of GN 12 and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR 102.20.

With regard to the first criteria, GN 12(b) provides, in pertinent part, as follows:

For purposes of this note, goods imported into the customs territory of the U.S. are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as goods originating in the territory of a NAFTA party only if: (i) they are goods wholly obtained or produced in the territory of Canada, Mexico and/or the U.S.; or (ii) they have been transformed in the territory of Canada, Mexico, and/or the U.S. so that each of the non-originating material used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s), and (t) of this note or the rules set forth therein, or the goods otherwise satisfy

the applicable requirements of subdivisions (r), (s), and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or they are goods produced entirely in the territory of Canada, Mexico and/or the U.S. exclusively from originating materials.

As stated in the facts above, the refined sugar is not wholly produced or obtained in Mexico. However, it would be wholly obtained or produced entirely in the territory of Canada and Mexico as set forth in GN 12(b)(i), and therefore, an originating good under GN 12.

Section 102.11, Customs Regulations (19 CFR 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for the purposes of country of origin marking and determining the rate of duty and quota category. Paragraph (a) of this section states that the country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) the good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

In this case, the sugar is not wholly obtained or produced exclusively from domestic materials. Therefore, we must proceed to 10 CFR 102.11(a)(3).

We assume for the purposes of this ruling that the imported refined sugar is classified in subheading 1701.99, HTSUS and the raw sugar is classified in subheading 1701.11, HTSUS.

The tariff shift rule set forth in 19 CFR 102.20 for goods of headings 1701–1702 is as follows:

A change to 1701 through 1702 from any other chapter.

Clearly, no chapter change takes place in this case. Therefore, we proceed to 19 CFR 102.11(b), which states that the country of origin of the single material that imparts the essential character to the good would determine the country of origin of the good. Pursuant to 19 CFR 102.18(b)(iii), if there is only one material that does not make the tariff shift, that single material would represent the essential character to the good under 19 CFR 102.11. In this case, the Mexican raw sugar would impart the essential character to the good. Therefore, the country of origin of the good would be considered Mexico.

The imported refined sugar would be an originating good for the purposes of the NAFTA and would be considered a product of Mexico for purposes of country of origin marking, rate of duty, and quota purposes.

**HOLDING:**

The imported refined sugar will be considered an originating good under the NAFTA because it is wholly obtained or produced entirely in the NAFTA territories. The country of origin of the imported refined sugar would be Mexico for purposes of country of origin marking, rate of duty, and for quota purposes.

**EFFECT ON OTHER RULINGS:**

NY Ruling N065187, dated July 16, 2009, is modified with respect to the analysis. The imported refined sugar is considered an originating good because it is wholly obtained or produced entirely in the NAFTA territories.

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

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial & Trade Facilitation Division*

cc; Frank Troise  
NIS, U.S. Customs and Border Protection  
New York, NY

## [ATTACHMENT B]

HQ H131645

June 30, 2011

OT:RR:CTF:VS H131645 KSG

DANIEL E. WALTZ  
PATTON BOGGS ATTORNEYS AT LAW  
2550 M STREET, NW  
WASHINGTON, D.C. 20037-1350

Re: Modification of New York ruling N025726; NAFTA eligibility; sugar

DEAR MR. WALTZ:

This is in response to your letter dated April 4, 2008, which CBP addressed in New York Ruling N025726, dated April 30, 2008, dealing with imported refined sugar.

**FACTS:**

Mexican-origin raw sugar will be processed at sugar refining facilities in Canada to produce refined cane sugar. The polarity of the sugar is 99.9 degrees and will be packaged in 50 lb. bags and/or 1 metric ton tote bags.

CBP held in NY Ruling N025726, that the cane sugar would be an “originating” good under the North American Free Trade Agreement (“NAFTA”) because it was wholly obtained or produced in Mexico.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice of proposed action was published on May 25, 2011, in the *Customs Bulletin*, Vol. 45, No. 22. No comments were received.

**ISSUE:**

Is the imported refined cane sugar eligible for preferential tariff preference under the North American Free Trade Agreement (“NAFTA”)?

**LAW AND ANALYSIS:**

Pursuant to General Note (“GN”) 12, HTSUS, for an article to be eligible for NAFTA preference, two criteria must be satisfied. First, the article in question must be “originating” under the terms of GN 12 and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR 102.20.

With regard to the first criteria, GN 12(b) provides, in pertinent part, as follows:

For purposes of this note, goods imported into the customs territory of the U.S. are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as goods originating in the territory of a NAFTA party only if: (i) they are goods wholly obtained or produced in the territory of Canada, Mexico and/or the U.S.; or (ii) they have been transformed in the territory of Canada, Mexico, and/or the U.S. so that each of the non-originating material used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s), and (t) of this note or the rules set forth therein, or the goods otherwise satisfy the applicable requirements of subdivisions (r), (s), and (t) where no change in tariff classification is required, and the goods satisfy all other

requirements of this note; or they are goods produced entirely in the territory of Canada, Mexico and/or the U.S. exclusively from originating materials.

As stated in the facts above, the refined sugar is not wholly produced or obtained in Mexico. However, it would be wholly obtained or produced entirely in the territory of Canada and Mexico as set forth in GN 12(b)(i), and therefore, an originating good under GN 12.

Section 102.11, Customs Regulations (19 CFR 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for the purposes of country of origin marking and determining the rate of duty and quota category. Paragraph (a) of this section states that the country of origin of a good is the country in which:

- (4) The good is wholly obtained or produced;
- (5) the good is produced exclusively from domestic materials; or
- (6) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

In this case, the sugar is not wholly obtained or produced exclusively from domestic materials. Therefore, we must proceed to 10 CFR 102.11(a)(3).

We assume for the purposes of this ruling that the imported refined sugar is classified in subheading 1701.99, HTSUS and the raw sugar is classified in subheading 1701.11, HTSUS.

The tariff shift rule set forth in 19 CFR 102.20 for goods of headings 1701–1702 is as follows:

A change to 1701 through 1702 from any other chapter.

Clearly, no chapter change takes place in this case. Therefore, we proceed to 19 CFR 102.11(b), which states that the country of origin of the single material that imparts the essential character to the good would determine the country of origin of the good. Pursuant to 19 CFR 102.18(b)(iii), if there is only one material that does not make the tariff shift, that single material would represent the essential character to the good under 19 CFR 102.11. In this case, the Mexican raw sugar would impart the essential character to the good. Therefore, the country of origin of the good would be considered Mexico.

The imported refined sugar would be an originating good for the purposes of the NAFTA and would be considered a product of Mexico for purposes of country of origin marking, rate of duty, and quota purposes.

#### **HOLDING:**

The imported refined sugar will be considered an originating good under the NAFTA because it is wholly obtained or produced entirely in the NAFTA territories. The country of origin of the imported refined sugar would be Mexico for purposes of country of origin marking, rate of duty, and for quota purposes.

#### **EFFECT ON OTHER RULINGS:**

NY Ruling N025726, dated April 30, 2008, is modified with respect to the analysis. The imported refined sugar is considered an originating good because it is wholly obtained or produced entirely in the NAFTA territories.

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

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial & Trade Facilitation Division*

cc; Frank Troise  
NIS, U.S. Customs and Border Protection  
New York, NY

**REVOCAION OF A RULING LETTER AND REVOCAION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF A WOMAN’S UPPER BODY  
GARMENT**

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

**ACTION:** Revocation of a ruling letter and revocation of treatment relating to the tariff classification of a woman’s upper body garment.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to relating to the tariff classification, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 20, on May 11, 2011. No comments were received in response to this notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jean R. Broussard, Tariff Classification and Marking Branch: (202) 325-0284.

**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 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. Section 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, a notice was published in the *Customs Bulletin*, Vol. 45, No. 20, on May 11, 2011, proposing to revoke a ruling letter on the tariff classification of a woman's upper body garment. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N052662, dated March 3, 2009, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N052662, and revoking or modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H055795, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 12, 2011

IEVA K. O'ROURKE  
*for*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachment

HQ H055795

July 12, 2011

**CLA-2 OT:RR:CTF:TCM** H055795 JRB**CATEGORY:** Classification**TARIFF NO.:** 6211.42.00

MS. ANITA LEE  
TRADE COMPLIANCE SUPERVISOR  
MARUBENI AMERICA CORPORATION  
375 LEXINGTON AVENUE  
NEW YORK, NEW YORK 10017-5644

**RE:** Revocation of NY N052662, dated March 3, 2009; Classification of a women's upper-body garment

DEAR MS. LEE:

This letter is in response to your request for reconsideration of New York Ruling Letter ("NY") N052662, issued to Marubeni America Corporation on March 3, 2009, concerning the tariff classification of a woman's upper-body garment. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 6206.30.3041 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), as a woman's cotton blouse. We have reviewed NY N052662 and found it to be in error. For the reasons set forth below, we hereby revoke NY N052662.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on May 11, 2011, in the *Customs Bulletin*, Volume 45, No. 20. No comments were received in response to this notice.

**FACTS:**

In NY N052662 we described the subject garment as follows:

Submitted sample, style #17330, is a woman's blouse constructed from 97% cotton and 3% spandex woven fabric. The blouse is collarless and features a round neckline,  $\frac{3}{4}$  length sleeves, a full front opening secured by four buttons, two chest pockets with buttoned flaps and a hemmed bottom. This garment will be imported in misses' sizes under style #17130 and in women's size under style #17230.

In addition to the above description, you also submitted a sample of this article to this office. After examining the sample, we note that the sample consists of at least three or more separate panels, that do not extend below the waist, and has white decorative stitching that encircles the collar. The back of the garment has darts sewn into it to help the garment contour to the wearer's body. Shell buttons that are approximately  $\frac{3}{4}$  of an inch in diameter provide the front closure for the garment. In addition, the sample is tapered just above the waist to maintain the shape of the wearer's body. The bottom of the garment's frontal opening is rounded. Finally, the sleeves have no button closures and are open.

**ISSUE:**

Whether the woman's upper body garment is classified in heading 6206, HTSUS, as a woman's blouse or in heading 6211, HTSUS, as an other garment?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, 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:

- 6202 Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6204:
- 6206 Women's or girls' blouses, shirts and shirt-blouses
- 6211 Track suits, ski-suits and swimwear; other garments:

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. CBP believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The General EN for Chapter 62 provides:

Shirts and shirt-blouses are garments designed to cover the upper part of the body, having long or short sleeves and a full or partial opening starting at the neckline. Blouses are also designed to cover the upper part of the body but may be sleeveless and without an opening at the neckline.

The EN's for heading 6202, HTSUS, provide that the EN's to heading 6102, HTSUS, apply *mutatis mutandis* to heading 6202, HTSUS. The EN's to heading 6102, HTSUS, then provide that the EN's to heading 6101, HTSUS, apply *mutatis mutandis* to that heading. The EN's for heading 6101, HTSUS, note that "[t]his heading covers a category of knitted or crocheted garments for men or boys, characterized by the fact that they are generally worn over all other clothing for protection against the weather." Therefore, a garment of heading 6202, HTSUS, must be characterized by the fact that it is worn over all other clothing for protection against the weather. See Headquarters Ruling Letter (HQ) 964244, dated November 21, 2000.

The EN to heading 6211, HTSUS, provides that the EN to heading 6114, HTSUS, applies, *mutatis mutandis*, to this heading. The EN for heading 6114, HTSUS, provides that the heading includes garments which are not included more specifically in the proceeding headings of this Chapter. Making the necessary changes to this EN so that it is applicable to heading 6211, HTSUS, we find that the EN's for heading 6211, HTSUS, instruct us to rule

out all other applicable headings of Chapter 62, HTSUS, before classification in heading 6211, HTSUS, is appropriate.

In both your request for reconsideration and in your initial ruling request you asserted that the proper classification for this garment is in heading 6211, HTSUS.

As noted above the EN's to heading 6202, HTSUS, indicate that this heading is limited to garments that are designed to be worn over all other garments to protect the wearer against the weather. The subject garment is not designed to be worn over all other garments. It is tailored to provide a very contoured fit and the weight of the garment would be insufficient to protect the wearer from the weather. As a result, this garment cannot be classified in heading 6202, HTSUS.

Turning to heading 6206, HTSUS, we note several definitions of the term "blouse". *The Fashion Dictionary*, by Mary Brooks Picken, 1957, at 23, defines "blouse" as having a "loose waist or bodice of various types extending from neckline to waistline or below. Worn inside or outside separate skirt." *The Essential Terms of Fashion*, by Charlotte Mankey Calasibetta, 1986, at 9, defines "blouse" as "clothing for the upper part of the body usually softer and less tailored than a shirt, worn with matching or contrasting skirt, pants, suit or jumper. Formerly called a waist." See also HQ 959416, dated July 5, 1996. Therefore, a blouse should be designed to cover the upper part of the body, can be sleeveless with or without an opening at the neckline, and can be worn either with other outer garments such as a suit type jacket or other less formal jackets. In addition, a blouse with pockets below the waist or a ribbed waistband or other means of tightening at the bottom of the garment would be excluded from heading 6206, HTSUS, and classified in heading 6211, HTSUS.

This particular garment covers the upper part of the body. It has sleeves and it does not have an opening at the neckline. However, the material of the garment does not have the soft hand typical of a shirt or blouse. In addition, heavy internal seams indicate that the garment would not be worn as a blouse due to the discomfort that these seams would cause from direct contact with the wearer's skin. The garment also has large shell buttons which are not typical buttons for a blouse. The bottom rounded frontal opening of the garment also is not indicative of a typical blouse. Finally, we would also note marketing information that is found on your website for similar items that you are marketing as jackets.<sup>1</sup> Thus, we agree with you that this particular garment would not be used as a blouse based on the garment's design, manufacturing, marketing, and likely use.

Since this garment is not described by any other heading in Chapter 62, HTSUS, it is classifiable in heading 6211, HTSUS.

#### **HOLDING:**

By application of GRI 1, the subject garment is classifiable in heading 6211, HTSUS, and in particular it is classified in subheading 6211.42.00, HTSUS, which provides for "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, women's or girls': [o]f cotton". The general column one duty rate is 8.1% *ad valorem*.

<sup>1</sup> See <http://www.rubyrd.com/>

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

**EFFECT ON OTHER RULINGS:**

NY N052662, dated March 3, 2009, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

IEVA K. O'ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**MODIFICATION OF RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE CLASSIFICATION  
AND COUNTRY OF ORIGIN MARKING OF CERTAIN  
PRINTED BUSINESS CARDS**

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

**ACTION:** Notice of modification of a ruling letter and treatment relating to the tariff classification and country of origin marking of printed business cards.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying New York Ruling Letter (NY) N095291, relating to the tariff classification and country of origin marking of printed business cards under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 45, No. 24, on June 8, 2011. CBP received no comments in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

**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, as amended (19 U.S.C. §1625 (c)(1)), notice proposing to modify NY N095291 was published on June 8, 2011, in Volume 45, Number 24, of the *Customs Bulletin*. CBP received no comments in response to the notice.

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

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

In NY N095291, CBP determined that printed business cards were classified in heading 4911, specifically subheading 4911.99.60, HTSUS, as "Other printed matter, including printed pictures and photographs: Other: Other: Other: Printed on paper in whole or in part by a lithographic process." CBP also determined that the printed business cards must be individually marked with their country of origin.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N095291, in order to reflect the proper classification and country of origin marking of the subject business cards, according to the analysis contained in Headquarters Ruling Letter (HQ) H101588, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: July 14, 2011

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

Attachments

HQ H101588

July 14, 2011

CLA-2 OT:RR:CTF:TCM H101588 CKG

CATEGORY: Marking

TARIFF NO.: 4911.99.60

MS. AMY ROSE  
MILGRAM & COMPANY LTD.  
500 – 407 MCGILL  
MONTREAL, QUEBEC  
CANADA H2Y 2G7

RE: Modification of NY N095291; the country of origin marking of printed material from China, Korea and Japan

DEAR Ms. ROSE:

This is in response to your letter of April 7, 2010, on behalf of Snap 3D Inc., requesting the reconsideration of New York Ruling Letter (NY) N095291, dated March 19, 2010, as it pertains to the country of origin marking of printed business cards and postcards from China, Korea and Japan. In NY N095291, CBP determined that the printed business cards and postcards at issue must be individually marked with their country of origin. We have reviewed NY N095291 and have determined that the classification and marking determinations with regard to the printed business cards was in error. Therefore, this ruling modifies NY N095291 with respect to the business cards at issue.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY N095291 was published on June 8, 2011, in Volume 45, Number 24, of the *Customs Bulletin*. CBP received no comments in response to the notice.

**FACTS:**

NY N095291 described the subject merchandise as follows:

Sample 1 is a lenticular printed business card which features a 3D effect. The business card displays a photo of the individual, the name, title, ID #, telephone number, etc. The printed image and text are printed directly onto a flexible plastic material. You state in your letter that, although the sample submitted is printed on one side, the actual items imported may be printed on both sides. The business card measures approximately 3 1/2" x 2 1/8". The business cards will be sold by the box.

Sample 2 is a lenticular printed postcard featuring advertising material with an animated or 3D image. The face of the postcard is divided into quarter sections which feature four advertising images that change in view when held at different angles. You state in your letter that the images and text are first printed on paper then laminated with plastic. The back of the postcard is divided into two sections. The left side is designed for writing a note. The right side is printed with four lines to enter a mailing address and a designated postage stamp area in the upper right hand corner. The postcard measures 4" x 6".

**ISSUE:**

Whether the individual business cards and postcards are required to be marked with their country of origin pursuant to 19 U.S.C. 1304.

**LAW AND ANALYSIS:****Classification:**

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification 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:

4911:	Other printed matter, including printed pictures and photographs:				
	Other:				
4911.99:	Other:				
		Other:			
4911.99.60:			Printed on paper in whole or in part by a lithographic process.		
4911.99.80:			Other . . . .		
	*	*	*	*	*

You dispute the classification of the business cards in subheading 4911.99.60, HTSUS, as other printed matter, printed on paper by a lithographic process. You note that the business cards are composed of a flexible plastic material, not paper. As the content of the business cards is printed on plastic and not paper, the business cards are classified in subheading 4911.99.80, HTSUS.

**Country of Origin Marking:**

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs and Border Protection (CBP) Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Congressional intent in enacting 19 U.S.C. 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co. Inc.*, 27 CCPA 297, 302, C.A.D. 104 (1940).

The general exceptions to marking are set forth in 19 U.S.C. 1304(a)(3)(A)-(K) and in Section 134.32 of the Customs Regulations (19 CFR 134.32).

19 CFR § 134.32 provides, in pertinent part, as follows:

§ 134.32 General exceptions to marking requirements.

The articles described or meeting the specified conditions set forth below are excepted from marking requirements (see subpart C of this part for marking of the containers): ...

(d) Articles for which the marking of the containers will reasonably indicate the origin of the articles;

19 U.S.C. 1304(b) provides, in pertinent part, as follows.:

(b) Marking of containers. Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a)...

You state that the business cards will be sold directly to the ultimate purchasers in the same, marked container in which they are imported. We agree that, pursuant to 19 CFR § 134.32(d), marking the container legibly, indelibly, and permanently with “printed in [China, South Korea or Japan]” is sufficient to indicate to the ultimate purchaser in the U.S. the country of origin of the business cards. Accordingly, marking the container in which the cards are imported and sold to the ultimate purchaser in lieu of marking the cards themselves is an acceptable country of origin marking for the imported cards provided the port director is satisfied that the articles will remain in the marked container until they reach the ultimate purchaser. *See e.g.*, HQ H016419, dated November 28, 2007; NY N035903, dated September 9, 2008; NY N025029, dated April 15, 2008; NY N015936, dated August 28, 2007; and NY R02849, dated November 22, 2005. 19 U.S.C. 1304(b) sets forth the marking requirements for containers, when the contents are excepted from marking under 19 U.S.C. 1304(a)(3).

You further indicate that the second category of cards and signs will be wrapped and sold to wholesalers and distributors for further resale. 19 CFR § 134.32(d) thus does not apply to the second category of printed articles, nor do you allege any alternate grounds for exception of this merchandise from the marking requirements of 19 U.S.C. 1304. The lenticular printed cards and signs should be individually marked on the reverse side with the country of origin.

**HOLDING:**

The printed business cards are classified in heading 4911, HTSUS, specifically subheading 4911.99.80, HTSUS, which provides for “other printed matter, including printed pictures and photographs: Other: Other: Other: Other.” The 2010 general, column one rate of duty is Free.

In accordance with 19 U.S.C. 1304(a)(3)(D), the printed business cards need not be marked, as long as CBP at the port of entry is satisfied that the

business cards will remain in their properly marked container until they reach the ultimate purchaser in the U.S.

The lenticular printed cards and signs should be individually marked on the reverse side with the country of origin.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs and Border Protection officer handling the transaction.

#### **EFFECT ON OTHER RULINGS:**

New York Ruling Letter (NY) N095291, dated March 19, 2010, is hereby modified with respect to the classification and the country of origin marking of the business cards at issue.

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial Rulings Division*



### **GENERAL NOTICE**

#### **Proposed Revocation of Treatment Relating to the Appraisement of Cut Flowers Entered Under Consignment**

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

**ACTION:** Notice of proposed revocation of treatment relating to the appraisement of cut flowers entered under consignment.

**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 treatment relating to the appraisement of cut flowers entered under consignment. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before September 2, 2011.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations

Branch, 799 9<sup>th</sup> Street, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9<sup>th</sup> Street, N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202-325-0118.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Reese, Valuation and Special Classification Branch, (202) 325-0046.

## **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)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, this notice advises interested parties that CBP proposes to revoke any treatment relating to the appraisement of cut flowers entered under consignment. For a considerable period of time, a port has allowed the appraised value of cut flowers for which claims for duty-free treatment under the Andean Trade Preference Act (ATPA) were made and which were entered under consignment to be calculated by certain importers using an average price supplied by a flower association. The average price is derived from prices from the previous four weeks (per flower and grade) of imported flowers, less a percentage for gross margin and international transportation. This average price is made available only to participating flower association members who use it for valuation of flowers they import under consignment.

While it appears that the merchandise was eligible for duty-free treatment, CBP has determined that this method of appraisement does not comply with the requirements of the Value Statute, 19 U.S.C. § 1401a. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to U.S.C. 1625(c)(2), CBP proposes to revoke any treatment which allowed appraisement of consignment entries using an average price supplied by a flower association.

Before taking this action, consideration will be given to any written comments timely received.

Dated:

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

Attachment

HQ H165361  
OT:RR:CTF:VS H165361 CMR  
CATEGORY: Valuation

U.S. CUSTOMS AND BORDER PROTECTION  
MIAMI INTERNATIONAL AIRPORT (SERVICE PORT)  
6601 NW 25TH STREET  
ROOM 272  
MIAMI, FL 33122

RE: Treatment of Flowers Imported Under Consignment; Valuation

DEAR PORT DIRECTOR:

Your office requested the advice of this office concerning the use of a valuation method for certain flowers imported under consignment. You believe that the method is not in accordance with the valuation statute. You ask our views with respect to this issue and also ask about the proper way to proceed in light of the fact that this method has been in use at your port for a considerable period of time. This decision is our response. For the reasons set forth below, any treatment that has been previously allowed based on the use of this method is revoked.

**FACTS:**

Until earlier this year, under the Andean Trade Preference Act (ATPA) fresh cut flowers from Columbia, Ecuador and Peru were eligible for duty-free treatment. The ATPA expired on February 12, 2011, and flowers from ATPA beneficiary countries thus became dutiable. In connection with this change, representatives of a flower association discussed with port officials the method of valuation for flowers entered under consignment. Under this method, flowers are valued based on an average of the prices of flowers from the previous four weeks (per flower and grade) of imported flowers, less a percentage for gross margin and international transportation. You indicate this average price is utilized only by participating floral association members.

You are of the view that this average price calculation being used by certain importers is contrary to the valuation statute, and have sought advice from this office regarding the appropriate manner to discontinue the use of this method and to notify the industry of the change. You supplied this office with information regarding the background of this issue, including a memorandum from the floral association to its members regarding the valuation of flowers entered under consignment and the agreement reached with Customs; two email messages from 2006; a November 9, 1999, Information Bulletin indicating that the Port of Miami would no longer be issuing the Monthly Flower Price List; and a Monthly Flower Price List issued by the Port of Miami, dated September 29, 1999, indicating the prices listed were the transaction values of identical or similar merchandise.

**ISSUE:**

What is the proper method of valuing consignment entries of cut flowers?

**LAW AND ANALYSIS:**

Merchandise imported into the United States is appraised in accordance with Section 402 of the Tariff Act of 1930, as amended by the Trade Agree-

ments Act of 1979 (TAA; 19 U.S.C. § 1401a). The preferred method of appraisement is transaction value, which is defined as the “price actually paid or payable for the merchandise when sold for exportation to the United States” plus certain statutory additions. 19 U.S.C. § 1401a(b)(1). However, in order to use transaction value as the basis for appraisement, there must be a *bona fide* sale. If there is no sale, as in the case of merchandise imported under consignment, then appraisement must be based on another method set forth in 19 U.S.C. § 1401a, the valuation statute, taken in sequential order.

The remaining methods of appraisement set forth in 19 U.S.C. § 1401a must be considered, in order of precedence: the transaction value of identical or similar merchandise (19 U.S.C. § 1401a(c)), deductive value (19 U.S.C. § 1401a(d)), computed value (19 U.S.C. § 1401a(e)), and the “fallback” method (19 U.S.C. § 1401a(f)).

The transaction value of identical merchandise or similar merchandise is based on sales, at the same commercial level and in substantially the same quantity, of merchandise exported to the United States at or about the same time as the merchandise being appraised. *See* 19 U.S.C. § 1401a(c). While this decision concerns cut flowers sold on consignment, it is possible that there are sales of identical or similar merchandise at the same commercial level and in substantially the same quantity exported to the U.S. at or about the same time as the consignment entries of cut flowers. As noted in Headquarters Ruling Letter (HQ) W563483, dated December 28, 2006, in *Four Seasons Produce, Inc. v. United States*, 25 CIT 1395 (2001), Mexican asparagus, exported to the U.S. on consignment, was appraised by Customs based on the transaction value of identical or similar merchandise. The court noted that Customs had considered the issue of the perishable nature and price fluctuations in the produce market in interpreting the statutory language “at or about the time” to arrive at a transaction value of identical or similar merchandise. The court also noted that Customs considered that in the case of perishable products, such as asparagus, prices may fluctuate seasonally, weekly or even daily. Thus, frequent price fluctuations did not preclude the appraisement of the asparagus based on the transaction value of identical or similar merchandise. Consignment entries of cut flowers imported through the Port of Miami should be appraised based upon the transaction value of identical or similar merchandise to the extent possible. *See* HQ 546999, dated April 12, 1999, for a discussion of appraisement using the transaction value of similar or identical merchandise.

If there are no entries of identical or similar flowers on which to base appraisement of a consignment entry of cut flowers, then the deductive value method is applied. Under the deductive value method, the merchandise is appraised on the basis of the price at which the merchandise concerned is sold in the U.S. in its condition as imported either at or about the time of importation, or before the close of the 90<sup>th</sup> day after the date of importation. The price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity. *See* 19 U.S.C. § 1401a(d)(2)(A)(i) and (ii). This sales price is subject to certain enumerated deductions. *See* 19 U.S.C. § 1401a(d)(3).

Fresh cut flowers are much like produce in that they are perishable in nature and subject to price fluctuations depending on the time of year and

various holidays. HQ W563483 cited to various rulings where produce has been valued based on the deductive value method, including HQ 545032, dated December 4, 1993 and HQ 546602, dated January 29, 1997. See HQ H007667, dated May 25, 2007, wherein CBP found melons from Panama to be properly appraised using deductive value.

As the merchandise concerned in deductive value refers not only to the actual imported merchandise, but also to identical or similar merchandise, we expect that cut flowers imported under consignment will be appraised either by the use of the transaction value of identical or similar merchandise or the deductive value method. It is unlikely that computed value would be selected before deductive value by an importer as it requires information from the producer that the importer is not likely to have. However, if an importer has the necessary information and chooses computed value to be applied ahead of deductive value, that is the importer's option. We see no reason to reach 19 U.S.C. § 1401a(f), the fallback method, as a value upon which to base appraisal should be ascertainable by one of the previous methods.

However, it appears that the fallback method is the method of appraisal being used for consignment entries by certain cut flower importers through the Port of Miami. 19 U.S.C. § 1401a(f) provides, in relevant part:

(1) If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this chapter, under subsections (b) through (e) of this section, the merchandise shall be appraised for the purposes of this chapter on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this chapter, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisal of imported merchandise at the higher of two alternative values;

(C) the price of merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) of this section for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;

(E) the price of merchandise for export to a country other than the United States;

(F) minimum values for appraisal; or

(G) arbitrary or fictitious values.

\* \* \*

The fallback appraisal method being used by certain cut flower importers, *i.e.*, participating members of the floral association, does not meet the requirements of paragraph § 1401a(f)(1) cited above. First, the value for appraisal purposes of cut flowers imported under consignment should be

ascertainable either through the use of the transaction value of identical merchandise or similar merchandise, or by the use of the deductive value method. Secondly, the method being used is not a reasonable adjustment to an existing method to arrive at a value. The method uses averaging to arrive at a value when other methods set forth in the statute provide reasonable means by which an appraisement value may be determined. In addition, 19 U.S.C. § 1401a(f)(2)(B), read in conjunction with 19 U.S.C. § 1401a(c)(2), shows a clear desire on the part of the drafters of the statute that the lowest value be used when more than one alternative value exists for appraisement purposes. Averaging of values clearly conflicts with this principle of the statute.

Because we find that the valuation methodology used by participating members of the floral association for entries of cut flowers imported on consignment is not in accord with the valuation statute, this decision serves to revoke any treatment that may have been allowed.

**HOLDING:**

The appraisement of cut flowers entered under consignment using an average price calculated by the floral association is not the proper method under 19 U.S.C. § 1401a. The treatment allowing the use of such prices for appraisement purposes is hereby revoked.

Flowers entered under consignment should be appraised based upon the transaction value of identical merchandise or similar merchandise (19 U.S.C. § 1401a(c)), if possible, deductive value (19 U.S.C. § 1401a(d)) if a value cannot be ascertained under 19 U.S.C. § 1401a(c), and then if unable to ascertain a value upon which to base appraisement, by computed value (19 U.S.C. § 1401a(e))<sup>1</sup> and “fallback” value (19 U.S.C. § 1401a(f)), in that order.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

---

<sup>1</sup> An importer may elect to have merchandise appraised based on computed value rather than deductive value. See 19 U.S.C. 1401a(a)(2).

**AGENCY INFORMATION COLLECTION ACTIVITIES:  
DOCUMENTATION REQUIREMENTS FOR ARTICLES  
ENTERED UNDER VARIOUS SPECIAL TARIFF  
TREATMENT PROVISIONS**

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

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

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 26750) on May 9, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before August 5, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-5806.

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

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

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

**OMB Number:** 1651-0067.

**Form Number:** None.

**Abstract:** U.S. Customs and Border Protection (CBP) is responsible for determining whether imported articles that are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 9801.00.10, 9802.00.20, 9802.00.25, 9802.00.40, 9802.00.50, and 9802.00.60 are entitled to duty-free or reduced duty treatment. In order to file under these HTSUS provisions, importers, or their agents, must have the declarations that are provided for in 19 CFR 10.1(a), 10.8(a), and 10.9(a) in their possession at the time of entry and submit them to CBP upon request. These declarations enable CBP to ascertain whether the statutory conditions and requirements of these HTSUS provisions have been satisfied. CBP proposes to add the declaration filed under HTSUS 9817.00.40 in accordance with 19 CFR 10.121 to this information collection.

**Current Actions:** CBP proposes to extend the expiration date of this information collection with a change to the burden hours resulting from updated estimates of the response time, and the addition of HTSUS 9817.00.40. There are no other changes to the information being collected.

**Type of Review:** Extension and Revision.

**Affected Public:** Individuals.

**Estimated Number of Respondents:** 19,455.

**Estimated Number of Responses per Respondent:** 3.

**Estimated Number of Total Annual Responses:** 58,335.

**Estimated Time per Response:** 1 minute.

**Estimated Total Annual Burden Hours:** 933.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229-1177, at 202- 325-0265.

Dated: June 30, 2011.

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

[Published in the Federal Register, July 6, 2011 (76 FR 39416)]