

# U.S. Customs and Border Protection



## RECEIPT OF PETITION TO RECONCILE INCONSISTENT CUSTOMS AND BORDER PROTECTION DECISIONS CONCERNING THE TARIFF CLASSIFICATION OF CN-9 SOLUTION

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

**ACTION:** Notice of receipt of petition to reconcile inconsistent Customs and Border Protection classification decisions; solicitation of comments.

**SUMMARY:** Customs and Border Protection (“CBP”) has received a petition, dated June 6, 2010, submitted by an importer (“petitioner”) under 19 CFR 177.13, requesting the reconciliation of inconsistent classification decisions under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a certain CN-9 solution that has been liquidated under subheading 2842.90.90, HTSUS, at the Port of Baltimore on June 3, 2010, and under subheading 3102.60.00, HTSUS, at the Port of Long Beach on October 13, 2009. The petitioner contends that the proper classification for the CN-9 Solution is in subheading 3102.60.00, HTSUS, as “Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate.” This document invites comments with regard to the correctness of each classification.

**DATES:** Comments must be received on or before August 24, 2011.

**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-2011-0025.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW., (Mint Annex), Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and docket number for this petition to reconcile inconsistent decisions concerning the tariff classification of CN-9 Solution. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read any 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, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325-0118. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

**FOR FURTHER INFORMATION CONTACT:** Tamar Anolic, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade at (202) 325-0036.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

A petition has been filed under section 177.13, CBP regulations (19 CFR 177.13), on behalf of Yara North America, Inc. ("Yara"). Yara is a subset of Yara International ASA, a global firm specializing in agricultural products and environmental protection agents. It is a supplier of mineral fertilizers. As an importer of these products, Yara has received inconsistent classification decisions on its merchandise at different ports. As such, Yara meets the requirements as an interested party set forth in 19 CFR 177.13(a)(2) and 19 U.S.C. 1514(c) and meets the requirements regarding the types of decisions subject to petition set forth in 19 CFR 177.13(a)(1) and 19 U.S.C. 1514(a). Furthermore, having filed this petition within 90 days of the latest decision it received from a port, Yara meets the timeliness requirements of 19 CFR 177.13(a)(3). Lastly, Yara also meets the requirements of 19 CFR 177.13(b)(2), and specifically 19 CFR 177.13(b)(2)(i) in that their petition contains a complete description of the inconsistent decisions of which they complain. Their petition includes enough information to demonstrate the inconsistency of the decisions at the Ports. Furthermore, the company has submitted a sample that has been tested at Customs and Border Protection ("CBP") laboratories.

Yara is requesting that CBP classify the imported merchandise in subheading 3102.60.00, Harmonized Tariff Schedule of the United States (HTSUS).

This transaction in particular concerns Yara's importation of CN-9 Solution, a hydrated ammonium calcium nitrate double salt that is primarily used as a fertilizer but is also used for waste water treatment. Yara entered the subject merchandise at the Port of Long Beach between January 24, 2009 and September 8, 2009, and the Port of Baltimore on April 20, 2010, under subheading 3102.60.00, HTSUS, as "Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate." Citing Legal Note 2(a)(v) to Chapter 31, HTSUS, the Port of Long Beach liquidated the subject merchandise as entered.

Citing Legal Note 5 to Chapter 28, HTSUS, the Port of Baltimore liquidated the subject merchandise under subheading 2842.90.90, HTSUS, as "Other salts of inorganic acids or peroxyacids (including aluminosilicates whether or not chemically defined), other than azides: Other: Other."

### Comments

Pursuant to section 177.13(c), CBP regulations (19 CFR 177.13(c)), before making a determination on this matter, CBP invites written comments on this petition to resolve inconsistent CBP decisions.

The comments received in response to this notice, will be available for public inspection on the docket at <http://www.regulations.gov>. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

**Authority:** This notice is published in accordance with section 177.13(c), CBP Regulations (19 CFR 177.13(c)).

Dated: August 3, 2011.

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

[Published in the Federal Register, August 9, 2011 (76 FR 44875)]

**DEPARTMENT OF THE TREASURY****19 CFR PART 159****RIN 1515-AD67 (FORMERLY RIN 1505-AC21)****COURTESY NOTICE OF LIQUIDATION**

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

**ACTION:** Final rule.

**SUMMARY:** This document amends title 19 of the Code of Federal Regulations (“CFR”) pertaining to the method by which U.S. Customs and Border Protection (“CBP”) issues courtesy notices of liquidation to importers of record whose entry summaries are filed in the Automated Broker Interface (“ABI”). Courtesy notices of liquidation provide informal, advance notice of the liquidation date and are not required by statute. For importers of record whose entry summaries are electronically filed in ABI, CBP currently provides an electronic courtesy notice to the ABI filer (importer of record or a broker that files as the agent of the importer of record) and a paper courtesy notice to the importer of record. In an effort to streamline the notification process and reduce printing and mailing costs, CBP will discontinue mailing paper courtesy notices of liquidation. All ABI filers (importers of record and brokers that file as the agent of an importer of record) will receive electronic courtesy notices. In addition, all importers of record with an Automated Commercial Environment (“ACE”) Secure Data Portal Account can monitor the liquidation of their entries by using the reporting tool in the ACE Secure Data Portal Account. Importers of record whose entries are not filed through ABI will continue to receive paper courtesy notices of liquidation.

**DATES:** *Effective date:* September 30, 2011. *Implementation date:* The first day on or after September 30, 2011, that CBP can provide importers with complete liquidation reports, including liquidation dates, electronically through the ACE Portal. CBP will confirm the date of implementation through electronic notification (see CBP.gov).

**FOR FURTHER INFORMATION CONTACT:** Laurie Dempsey, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202-863-6509.

## SUPPLEMENTARY INFORMATION:

### Background

On March 16, 2010, U.S. Customs and Border Protection (“CBP”) published a proposed rule in the **Federal Register** (75 FR 12483) proposing to amend title 19 of the Code of Federal Regulations (“19 CFR”) to discontinue mailing paper courtesy notices to importers of record whose entry summaries are filed in the Automated Broker Interface (“ABI”). The proposed amendments were intended to streamline the notification process and reduce printing and mailing costs, as provided in the proposed rule. *See* 75 FR 12483.

While CBP is not statutorily required to provide advance notice of the liquidation date to the importer or his agent, CBP does issue informal, courtesy notices of liquidation (hereinafter “courtesy notice” or “courtesy notices”). *See* 19 CFR 159.9(d).

Currently, CBP issues electronic courtesy notices to all ABI filers: importers of record who file their own entries and customs brokers who file as the duly authorized agents of the importer of record. CBP’s Technology Center also mails paper courtesy notices, on CBP Form 4333–A, to all importers of record whose entry summaries are scheduled to liquidate by each port of entry. As a result, two courtesy notices are issued for importers of record whose electronic entry summaries are filed in ABI: An electronic courtesy notice to the ABI filer, that is either the importer of record or a customs broker filing on behalf of the importer of record, and a paper courtesy notice to the importer of record. Therefore, this renders duplicative the paper courtesy notice sent by CBP to importers of record that file their own entries in ABI because, as an ABI filer, they already receive an electronic courtesy notice. *See* 19 CFR part 143.

Under the proposed rule, when electronic entry summaries are filed in ABI, ABI filers would only receive electronic courtesy notices; paper courtesy notices would not also be sent to importers of record that do not file their own entries. Importers of record filing a paper formal entry with CBP would continue to receive a mailed courtesy notice. *See* 19 CFR parts 141 and 142. In addition, all importers of record with an Automated Commercial Environment (“ACE”) Secure Data Portal Account can monitor the liquidation of their entries by using the reporting tool in the ACE Secure Data Portal Account.

### Cost Savings

The following analysis details the cost savings that would be realized by the agency as a result of eliminating paper courtesy notices to importers of record who personally receive an electronic courtesy notice or whose broker receives an electronic courtesy notice on their

behalf. In FY 2009, CBP sent approximately 7.2 million paper courtesy notices. Under this rule, CBP estimates that over 90 percent of paper courtesy notices will be eliminated. For the purpose of this analysis, we assume 6.5 million paper notices (90 percent) will be eliminated. Additionally, we assume that the number of notices does not change from year to year.

### *Quantified Savings*

#### 1. Postage

By decreasing the number of paper courtesy notices distributed, CBP will significantly reduce postage costs required to mail the notices. Current U.S. Postal Service first-class letter rates are 44 cents within the United States, 75 cents to Canada, 79 cents to Mexico, and 98 cents to the rest of the world. Exhibit 1 shows the total estimated savings on postage in 2010, an estimated \$3 million.

#### **Exhibit 1—Total Savings on Postage in 2010 (Undiscounted)**

Notice destination	Number of notices	Total cost
Domestic .....	5,899,816	\$2,595,919
Canada .....	379,301	284,475
Mexico .....	57,371	45,323
Other Foreign .....	167,193	163,849
Total .....	6,503,681	3,089,566

#### 2. Forms

CBP estimates that each courtesy notice form costs \$0.027. Decreasing the number of paper forms by 6.5 million will save the agency approximately \$175,599 per year.

#### 3. Labor

CBP estimates the cost of contractors employed to print the paper courtesy notices is \$0.08 per copy. Based on this estimate, the cost savings on labor for printing is approximately \$520,294 per year.

### *Total Quantified Savings*

Exhibit 2 displays all of the cost savings that have been quantified for this analysis.

**Exhibit 2—Total Savings from Reducing Paper Courtesy Notices in 2010 (Undiscounted)**

Cost	Annual savings
Postage .....	\$3,089,566
Forms .....	175,599
Labor .....	520,294
Total .....	3,785,460

We total these savings over the next 10 years at a 3 and 7 percent discount rate, per guidance provided in the OMB's Circular A-4. Total estimated savings range from \$28.4 million to \$33.3 million over the period of analysis. Annualized savings are \$3.8 million. Total present value and annualized savings are presented in Exhibit 3.

**Exhibit 3—Total Present Value and Annualized Costs of Additional Data Elements, 2010– 2019**

Total present value costs (\$ millions)		Annualized costs (\$ millions)	
3%	7%	3%	7%
\$33.3	\$28.4	\$3.8	\$3.5

*Additional Savings Not Quantified*

CBP has service contracts with fixed monthly costs for the equipment used to print and mail the paper courtesy notices. Current maintenance costs are approximately \$45,048 per year for two printers and approximately \$3,478 per year for a finishing machine. CBP is exploring lower cost options to replace these machines, but we are unable to quantify these savings or predict when they might occur. Additional costs associated with the printing and distribution of paper courtesy notices include labor by government employees on the CBP Mail Management Team and mainframe processing time. Reducing the number of paper notices will allow both Mail Management Team and mainframe resources to be used for other purposes. While we do not have enough data to quantify these savings at this time, they are important to consider in the analysis of the total impact of the reduction of paper courtesy notices.

*Summary of Cost Savings*

CBP estimates that this rule will save the agency \$3.8 million annually by eliminating 90 percent, or approximately 6.5 million, of the paper courtesy notices currently sent to importers. If more than

90 percent are eliminated, savings could be higher. Quantified savings include reduced postage, forms, and contract labor costs. Additional savings may be realized by reducing maintenance costs on equipment used to produce the paper notices and allowing more efficient use of other government resources.

CBP solicited public comments on the proposed rule.

### **Discussion of Comments**

Eight commenters responded to the solicitation of public comments in the proposed rule. Several of these commenters applauded CBP's effort to achieve cost savings by eliminating the mailing of paper. However, three commenters objected to CBP entirely eliminating the paper courtesy notice for ABI filers for several reasons discussed below, and four commenters requested that the courtesy mailing continue until CBP develops an alternative means of notifying importers of the liquidation of their entries.

#### *Comment*

Several commenters stated that the proposal will make importers of record reliant upon their brokers for liquidation information. Importers stated that they use the liquidation information on the courtesy notices to: monitor their entries for fraudulent activities; determine liquidation dates, protest deadlines, and contingent liability periods; check for errors; and track the status of antidumping and countervailing duty entries.

Without the courtesy notice, importers who are ABI filers state that they would need to contact their brokers for the liquidation information. However, a commenter noted that many importers utilize more than one customs broker to make their entries, and sometimes, the importer's broker will use outport brokers (those from other customs broker districts) to make entry on behalf of the importer for whom they have a power of attorney.

Moreover, it was noted that brokers sometimes fail to provide importers with timely notification of liquidation information. When such instances occur, the broker's liability is limited to \$50, whereas importers may lose their ability to challenge a CBP decision, thereby potentially resulting in a loss of millions of dollars.

#### *CBP Response*

Pursuant to 19 CFR 111.39, "[a] broker must not withhold information relative to any customs business from a client who is entitled to

that information.” Liquidation information is information related to “customs business”; therefore, brokers cannot withhold this information from their importer clients.

In addition, ACE is being reprogrammed to allow all importers of record to monitor liquidation of entries filed under their importer of record number(s) through the ACE Portal. Importers can establish an ACE Portal Account to access reports that will help them monitor entry filings for potential fraudulent entries and access liquidation dates for entries filed by any filer using the importer of record number belonging to the importer, regardless of the filer code used.

Furthermore, whether or not the importer has an ACE Portal Account, the importer may gain limited access to a broker’s ACE Portal Account to obtain reports for entries filed by the broker using the importer of record number belonging to that importer, if the broker that filed the entry grants the importer such access.

Given data storage limitations, at this time, the ACE Portal only contains entry data for entries filed in the current CBP fiscal year and the previous four CBP fiscal years. (The CBP fiscal year runs from October 1 through September 30.) Importers needing liquidation dates for entries filed beyond that time period may contact their broker, who can obtain that information by running an ABI query. As for antidumping and countervailing duty entries, depending on the entry date, importers may be able to check their status via a report in the ACE Portal. Please note that contractual terms of liability between importers and brokers are not controlled by CBP.

Additional information on the ACE Portal capabilities and instructions for applying for access to the ACE Portal, which is accessible free of charge, are available on the following Web site: [http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace\\_app\\_info/](http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_app_info/).

The instructions for managing ACE Portal user accounts are available on the following Web site: [http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace\\_welcome/ace\\_welcome\\_package/](http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_welcome/ace_welcome_package/).

#### *Comment*

One commentator was concerned about the accessibility of liquidation information entered with a filer code that subsequently became inactive at the time of liquidation.

#### *CBP Response*

Even if the filer code is no longer active, the importer will be able to access the liquidation date associated with the importer’s importer of record number using the reporting tool in the ACE Portal.

### *Comment*

Several commenters suggested alternatives to CBP's proposal, such as: creating a system for importers to obtain the liquidation information that is available on the courtesy notices; sending courtesy notifications via e-mail; surveying importers who file their entries via ABI to determine whether they wish to discontinue receiving mailed courtesy notices allowing importers to opt out of receiving paper courtesy notices at the time CBP assigns an importer of record number for importers, or notifying the importers at that time that they will have either to rely upon ABI for liquidation information or participate in ACE; ensuring that the information listed in ACE is accurate, particularly the data regarding older entries; and developing an electronic bulletin notice of liquidation.

Also, several commenters suggested delaying implementation of the proposal until ACE becomes capable of issuing complete liquidation reports and/or until all entry filers begin using ACE.

### *CBP Response*

On the effective date of this document, through the ACE Portal reporting mechanism, CBP will be able to make available complete liquidation reports to importers with ACE accounts, including liquidation dates for all entries. Furthermore, an e-mail courtesy notification of liquidation would just duplicate this information.

CBP does not plan on surveying the trade community to determine which ABI-filing importers wish to discontinue receiving mailed courtesy notices, which CBP believes would not garner further substantial input. CBP agrees that training will help importers transition into using the ACE system. Currently, CBP provides Web-based training for new ACE Account holders, and help desk support to aid with account access, account management, and report generation in the ACE Portal. Please see the following Web site for further information: [https://nemo.customs.gov/ace\\_online/](https://nemo.customs.gov/ace_online/).

Although this training resource and the ACE Portal are already available and functional, importers will have until September 17, 2011 to enroll in the ACE Portal Account and familiarize themselves with the reporting system.

Moreover, CBP has considered the option of posting an electronic bulletin notice of liquidation and will continue to explore the feasibility of that option. Courtesy notices of liquidations, rather than the statutorily mandated bulletin notice of liquidation, are the focus of this rulemaking. Accordingly, this suggestion is outside the scope of this rulemaking.

The purpose of this proposal is to reduce printing and mailing costs by eliminating duplicative notice to importers that file their entries via ABI. Therefore, CBP does not intend to provide importers with the option of receiving paper courtesy notices or opting out of receiving paper courtesy notices.

Regarding the suggestion that CBP should ensure that the information in ACE is accurate, particularly regarding older entries, CBP agrees that maintaining accurate data in any system of record is of paramount concern. As discussed above, the entry data in the ACE Portal is confined to the current CBP fiscal year and the previous four CBP fiscal years because of data storage limitations. ABI filers may run an ABI query for liquidation dates for entries filed beyond that time period. Please note that for a historical report on all of an importer's importation activity over a set time period, an importer can file a request with CBP for an ITRAC (Importer Trade Activity) report for a fee, see <http://www.cbp.gov/xp/cgov/admin/fl/foia/itrac/itrac.xml>. If one is a C-TPAT member, this report is provided free of cost.

Finally, the ACE report contains the same data elements as the paper courtesy notice, with the exception of: (1) Importer address; (2) series; (3) refer inquiries to; and (4) liquidation code. The "importer address" data element will not appear in the ACE Portal report because the report will not be mailed. The "series" data element will not appear because it has not been used since 1986 when the entry format configuration was changed to eliminate the series, that is, the "2-digit Fiscal Year" code which appeared in the 5th and 6th place of the entry number format. The "refer inquiries to" data element will not appear in the ACE Portal report; however, the report will provide the name and code for the port of entry. Importers can refer any inquiries to the appropriate port of entry using the following Web site: <http://www.cbp.gov/xp/cgov/toolbox/contacts/ports/>. Finally, the "liquidation code" data element is an internal CBP-assigned code used for managing various liquidation types and will not appear in the report.

#### *Comment*

One commenter indicated that courtesy notices deemed undeliverable by the U.S. Postal Service help the Revenue Division update its importer address database.

#### *CBP Response*

The Revenue Division now relies on the importer to keep its address and contact information current with CBP.

## Conclusion

After review of the comments and further consideration, CBP has decided to adopt the proposed rule published in the **Federal Register** (75 FR 12483) on March 16, 2010, without substantive change. Accordingly, the effective date will be September 30, 2011. The implementation date will be the first day on or after September 30, 2011, that CBP can provide importers with complete liquidation reports, including liquidation dates, electronically through the ACE Portal. CBP will confirm implementation through electronic notification (see <http://www.cbp.gov>).

## Executive Order 12866

This final rule is not a “significant regulatory action” per Executive Order 12866 because it will not result in savings or expenditures totaling \$100 million or more in any one year. The Office of Management and Budget (“OMB”) has not reviewed this regulation under that order. The final rule will result in cost savings as discussed earlier in the preamble.

## Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This final rule will eliminate paper courtesy notices that are sent to importers who file entry summaries via ABI or who hire a third party to file via ABI on their behalf. The primary impact of this final rule will be the savings realized by CBP as a result of eliminating a large portion of its annual printing and mailing costs associated with paper courtesy notices. Those importers that do not file using ABI will continue to receive paper courtesy notices. Those importers that file via ABI themselves will not be significantly impacted because they will continue to receive an electronic notification. Those importers that hire a broker to file via ABI on their behalf (with the broker filing as an agent and not an importer of record) will now have to obtain the notification from their broker or view the information via CBP’s ACE Portal. To the extent that brokers send the notification to the importer, they will bear a small cost, but because of the low cost of forwarding this information either electronically or by mail, this cost does not rise to the level of significance. CBP solicited comments on the economic impact of this rule on small entities in the Notice of

Proposed Rulemaking, but did not receive any of substance. For these reasons, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

### **Paperwork Reduction Act**

As there is no collection of information in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

### **Signing Authority**

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

### **List of Subjects in 19 CFR Part 159**

Antidumping, Countervailing duties, Customs duties and inspection, Foreign currencies.

### **Amendments to the CBP Regulations**

For the reasons set forth in the preamble, part 159 of title 19 of the CFR (19 CFR part 159) is amended as set forth below.

## **PART 159—LIQUIDATION OF DUTIES**

■ 1. The general authority citation for part 159 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1500, 1504, 1624. \* \* \* \* \*

■ 2. In § 159.9, paragraph (d) is revised to read as follows:

### **§ 159.9 Notice of liquidation and date of liquidation for formal entries.**

\* \* \* \* \*

(d) *Courtesy notice of liquidation.* CBP will endeavor to provide importers or their agents with a courtesy notice of liquidation for all entries scheduled to be liquidated or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to an authorized electronic data interchange system if the entry summary was filed electronically in accordance with part 143 of this chapter or on CBP Form 4333-A if the entry was filed on paper pursuant to parts 141 and 142 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

**§ 159.11 [Amended]**

■ 3. In § 159.11, paragraph (a) is amended in the last sentence, by removing the words “on CBP Form 4333–A”.

**§ 159.12 [Amended]**

■ 4. In § 159.12:

■ a. Paragraph (f)(1) is amended, in the last sentence, by removing the words “on CBP Form 4333–A”;

■ b. Paragraph (g) is amended, in the last sentence, by removing the words “on CBP Form 4333–A”.

Dated: August 12, 2011.

ALAN D. BERSIN,  
*Commissioner,*  
*U.S. Customs and Border Protection.*

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

[Published in the Federal Register, August 17, 2011 (76 FR 50883)]

  
**NOTICE OF ISSUANCE OF FINAL DETERMINATION  
CONCERNING CERTAIN DIGITAL PROJECTORS**

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

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain digital projectors. Based upon the facts presented, CBP has concluded that the assembly and programming operations performed in Taiwan substantially transform the non-TAA country components of the projectors. Therefore, the country of origin of the projectors is Taiwan for purposes of U.S. government procurement.

**DATES:** The final determination was issued on July 29, 2011. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before September 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325-0034.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on July 29, 2011, pursuant to subpart B of part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of digital projectors which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H146735, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that, based upon the facts presented, the assembly and programming operations performed in Taiwan substantially transform the non-TAA country components of the projectors. Therefore, the country of origin of the projectors is Taiwan for purposes of U.S. government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: July 29, 2011.

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

Attachment

HQ H146735

July 29, 2011

MAR-2 OT:RR:CTF:VS H146735 HkP

Category: Marking

MUNFORD PAGE HALL, Esq.  
WILLIAM C. SJOBERG, Esq.  
ADDUCI, MASTRIANI & SCHAUMBERG LLP  
1200 SEVENTEENTH STREET, NW  
WASHINGTON, DC 20036.

RE: Final Determination; Substantial Transformation; Country of Origin of Certain Digital Projectors

MR. HALL AND MR. SJOBERG:

This is in response to your letter dated January 21, 2011, requesting a final determination on behalf of a foreign manufacturer, pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of two models of digital projectors. We note that as the manufacturer of the digital projectors, the foreign manufacturer is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

**FACTS:**

According to the submitted information, the subject merchandise is two models of digital projectors, Model A and Model B (collectively, the digital projector). The projector is a 9cm x 30cm x 20cm, 2.5kg, digital light processing (DLP) projector, designed to use a high-intensity discharge (HID) arc lamp as the light source to project images from computers and other video sources. It can produce an image size of up to 307 inches diagonally. The main differences between Model A and Model B are the resolution of the projected image and the throw ratio (basically the viewing distance from the screen).

The projector is composed of the following components:

Components of Taiwanese origin include:

(1) System firmware, which controls the functions of the keypad, remote controller, USB port, lamp brightness, volume, and on-screen display main menu, as well as image processing. The fully assembled projector is programmed in Taiwan with this firmware.

(2) Power control firmware, used to control the on/off function of the projector and to retrieve the input/output (I/O) setting of the projector in the latest turn-off from an electronically erasable programmable read only memory (EEPROM). The firmware detects the power signal and transmits the command to the low voltage power supply (LVPS) to output the required voltage for the system and the lamp. The firmware also controls the operation

of the fans and detects their operating status. The fully assembled projector is programmed in Taiwan with this firmware.

(3) Extended Display Identification Data (EDID) firmware, a Video Electronics Standard Association (VESA) data format that contains basic information about the projector and its capabilities, including vendor information, maximum image size, color characteristics, factory pre-set timings, frequency range limits, and character strings for the model name and serial number. The information is stored in the display and uses the Display Data Channel (DDC) to communicate between the projector and a personal computer graphics adapter. The system uses this information for configuration purposes. The fully assembled projector is programmed in Taiwan with this firmware.

(4) Network firmware, which contains the network protocol, is used to receive instructions to control the projector from a remote user using a computer. The firmware may be updated in Taiwan during the assembly and testing processes.

Components of Chinese origin include:

(1) Bottom cover module, comprised of parts from Korea, China, and Taiwan.

(2) Elevator module, used to adjust the height of the projector, comprised of parts from China and Japan.

(3) Right cover module, comprised of parts from China.

(4) Input/Output (I/O) cover module, comprised of parts from China.

(5) Top cover module, comprised of parts from Japan, Taiwan, China, the U.S., and Korea.

(6) Cosmetic module, comprised of parts from China.

(7) Fan modules, comprised of the system (axial) fan module and the lamp blower module attached to the lamp housing, comprised of parts from China.

(8) Lamp driver (ballast) module, comprised of parts from China.

(9) Lamp driver firmware, used to control lamp ignition and to obtain the ballast waveform that controls the output current with respect to the angle of the color wheel. White light, generated by a high intensity discharge arc lamp, passes through the filter to generate different colors. The firmware is programmed into an IC on the lamp driver module (Chinese component no. 8) in China.

(10) Color wheel module, which includes the color wheel, photo sensor board with photo sensor, and bracket. It acts as a time-varying wavelength filter to allow certain wavelengths of light to pass through at the appropriate times so that the filtered light may be modulated by the light valve, DMD (digital micromirror device, *i.e.*, an optical semiconductor), to produce the projected image with full color. Module parts are from Japan, China, and Taiwan.

(11) Zoom ring module, comprised of parts from China.

(12) Lamp module, comprised of parts from China.

(13) Lamp cover module, comprised of parts from China.

(14) Semi-finished optical engine module, which includes a Taiwanese-origin DMD, a DMD board, an optical lens, a projection lens, and rod integrator. Module parts are from Taiwan and China.

(15) Main board module, which stores the system firmware (Taiwanese component no. 1) on a Taiwanese-origin DDP2431 processor, comprised of parts from China, the Czech Republic, Taiwan, Japan, Korea, and the U.S.

(16) Low voltage power supply (LVPS) module, comprised of parts from Taiwan, Japan, Korea, China, and the U.S.

(17) Local area network (LAN) module board, comprised of parts from the U.S. and unnamed countries. It is programmed with Taiwanese-origin network firmware (Taiwanese component no. 4) in China.

(18) Miscellaneous items: screws, EMI gaskets, tape (Mylar and 3M), 16-pin wiring, brackets, main board spacers, insulating rubber, Mylar film, and elevator feet.

Modules 1–8 and 10–17 are assembled in China and shipped to Taiwan. The miscellaneous Chinese components described at no. 18 above are also shipped to Taiwan to be assembled with the 16 Chinese modules.

In Taiwan, the imported modules and components are inspected and then assembled into a complete digital projector using the Chinese screws, EMI gaskets, tape (Mylar and 3M), 16-pin wiring, brackets, main board spacers, insulating rubber, Mylar film, and an elevator foot. The projector is then programmed with the power control firmware and system firmware developed in Taiwan, and then subjected to various tests. During the testing stage, the projector is also loaded with Taiwanese-origin EDID firmware, which programs the identification of the projector into the EEPROM on the main board.

#### **ISSUE:**

What is the country of origin of the projector for purposes of U.S. government procurement?

#### **LAW AND ANALYSIS:**

Pursuant to Subpart B of Part 177, 19 C.F.R. § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 C.F.R. § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int’l Trade 1983), *aff’d*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation.

In *Data General v. United States*, 4 Ct. Int’l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States

substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its “memory” which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in “designing and building hardware.” While replicating the program pattern from a “master” PROM may be a quick one-step process, the development of the pattern and the production of the “master” PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a “substantial transformation” than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

You argue that Taiwan is the country of origin of the projector because it is the country in which the following actions occur: design and development of the projector, including the main board; addition of the majority of the value (materials and labor); fabrication of many parts, including the data processors (the DMD and DDP2431) that are claimed to be the major functional parts of the projector; development of four of the five firmware files used to operate the projector; programming of the main board with system firmware and programming of the control panel with power control firmware; assembly of the Chinese modules with disparate parts to make a functional projector; and, testing and adjustment of the projector. You point out that 60 percent of the total cost of materials (including accessories and packing material) comes from the United States and TAA designated countries, and that the processing in Taiwan will require 180 steps, including assembly, programming, testing, and packing.

Further, you claim that the Chinese modules are substantially transformed in Taiwan when they are assembled into a projector. As a result of the color wheel module being assembled with the semi-finished optical engine module in Taiwan, the HID arc lamp can be used as a light source and the DMD can be used as a light valve to produce color images. When the lamp ballast is connected to the LVPS, the ballast gains a power source, and when connected to the main board, the lamp can be controlled. Connecting the Chinese main board module to the semi-finished optical engine module, the DMD board, fan modules, and color wheel module allows all the boards attached to the main module to be controlled. The LVPS powers the main board so that the modules attached to it can operate. Finally, assembling the top cover module with the main board module allows the projector to be controlled through the keypad.

You state that factors such as the resources expended on design and development, extent and nature of post-assembly inspection and testing procedure, and worker skill required during the manufacturing process have

been considered in determining whether a substantial transformation occurred. In support of your position you cite Headquarters Ruling Letters (HQ) H100055 (May 8, 2010), H034843 (May 5, 2009), and H015324 (April 23, 2008), 559534 (June 4, 1996), among others.

HQ H100055 concerned a motorized lift unit, designed, developed and engineered in Sweden, for an overhead patient lift system. The PCBA was assembled and programmed prior to its importation in Sweden but it was designed in Sweden and its software program was written in Sweden. The unit was then assembled in Sweden, which included the manufacture of the electrical motor. CBP found that the manufacturing and testing operations in Sweden were sufficiently complex and meaningful to transform the individual components into the lift unit, thereby making Sweden the country of origin of the unit. HQ H034843 concerned a USB flash drive partially manufactured in China and in Israel or the United States. CBP concluded that there was a substantial transformation either in Israel or in the United States, depending on the location where the final three manufacturing operations took place. HQ H015324 involved stereoscopic displays assembled in the U.S. from non-U.S. parts. U.S. assembly resulted in a substantial transformation of imported LCD monitors and a beamsplitter mirror.

In this case, the bottom cover module, elevator module, right cover module, I/O cover module, cosmetic module, two fan modules, lamp driver module programmed in China with Chinese firmware, zoom ring module, lamp module, lamp cover module, semi-finished optical engine module, color wheel module, main board module, top cover module, LAN module programmed in China with Taiwanese-origin firmware, and the LVPS module, from China are assembled together in Taiwan with other Chinese components to form a complete projector. After assembly, the projector is programmed in Taiwan with three types of firmware developed in Taiwan. The first, power control firmware, is used to control on/off functions and to retrieve the input/output setting from the last time the projector was turned off. The second, system firmware, controls the functions of the keypad, remote control, USB port, lamp brightness, volume, on-screen display menu, and image processing. The third, EDID firmware, contains basic information about the projector, such as maximum image size, color characteristics, factory pre-set timings, and frequency range limits. We find that the assembly and programming operations performed in Taiwan are sufficiently complex and meaningful so as to create a new article with a new character, name and use. *See, for e.g.*, HQ H034843 and H100055. Moreover, we note that some of the Chinese modules were made using Taiwanese parts. Through the operations undertaken in Taiwan, the individual parts lose their identities and become integral to the new and different article, i.e., the projector. *See Belcrest Linens*. Accordingly, we find that the country of origin of the projector is Taiwan.

#### **HOLDING:**

Based on the facts in this case, we find that the assembly and programming operations performed in Taiwan substantially transform the non-TAA country components of the projector. Therefore, the country of origin of the Model A and Model B projectors is Taiwan for purposes of U.S. government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party

which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

*Sincerely,*

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

[Published in the Federal Register, August 11, 2011 (76 FR 49782)]

## **ACCREDITATION AND APPROVAL OF SAYBOLT, LP., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Saybolt, LP., as an approved commercial gauger and accredited laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt, LP., 414 Weschester, Corpus Christi, TX 78469, has been approved to gauge and test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operationssupport/labsscificsvcs/commercial\_gaugers/*.

**DATES:** The accreditation and approval of Saybolt, LP., Inc., Corpus Christi, TX, as commercial gauger and accredited laboratory became effective on April 6, 2011. The next triennial inspection date will be scheduled for April 2014.

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

Dated: August 5, 2011.

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

[Published in the Federal Register, August 15, 2011 (76 FR 50489)]



**ACCREDITATION AND APPROVAL OF SAYBOLT, LP., AS A  
COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Saybolt, LP., as an approved commercial gauger and accredited laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt, LP, Road 127 KM 13.4 Bo. Magas Arriba, P.R., has been approved to gauge and test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. [http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/).

**DATES:** The accreditation and approval of Saybolt, LP, Inc., Guayanilla, P.R., as commercial gauger and accredited laboratory became effective on March 11, 2010. The next triennial inspection date will be scheduled for March 2013.

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

Dated: August 5, 2011.

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

[Published in the Federal Register, August 15, 2011 (76 FR 50488)]

## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **Harbor Maintenance Fee**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing collection of information: 1651-0055.

**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: Harbor Maintenance Fee (CBP Forms 349 and 350). 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 26311) on May 6, 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 September 14, 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.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to 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.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Harbor Maintenance Fee.

**OMB Number:** 1651-0055.

**Form Number:** CBP Forms 349 and 350.

**Abstract:** The Harbor Maintenance Fee (HMF) and Trust Fund is used for the operation and maintenance of certain U.S. channels and harbors by the Army Corps of Engineers. U.S. Customs and Border Protection (CBP) is required to collect the HMF from importers, domestic shippers, and passenger vessel operators using Federal navigation projects. Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.125 percent of its value if the loading or unloading occurs at a port that has been designated by the Army Corps of Engineers. The HMF also applies to the total ticket value of embarking and disembarking passengers and on cargo admissions into a Foreign Trade Zone (FTZ).

CBP Form 349, *Harbor Maintenance Fee Quarterly Summary Report*, and CBP Form 350, *Harbor Maintenance Fee Amended Quarterly Summary Report*, are completed by domestic shippers, foreign trade zones applicants, and passenger vessel operators and submitted with payment to CBP. CBP proposes to amend Form 349 to add the respondent's email address and fax number.

CBP uses the information collected on CBP Forms 349 and 350 to verify that the fee collected is timely and accurately submitted. These forms are authorized by the Water Resources Development Act of 1986 (26 U.S.C. 4461, *et seq.*) and provided for by 19 CFR 24.24, which also includes the list of designated ports. CBP Forms 349 and 350 are accessible at <http://www.cbp.gov/xp/cgov/toolbox/forms/> or they may be completed and filed electronically at <http://www.pay.gov>.

**Current Actions:** This submission is being made to extend the expiration date of this information collection with a change to the burden hours resulting from revised estimates of the number of responses. CBP also proposes to add the respondent's email address and fax number to Form 349. There are no proposed changes to CBP 350.

**Type of Review:** Extension (with change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 575.

**Estimated Number of Responses:** 2,300.

**Estimated Time per Respondent:** 130 minutes.

**Estimated Total Annual Burden Hours:** 1,246.

Dated: August 9, 2011.

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

[Published in the Federal Register, August 15, 2011 (76 FR 50489)]

