

U.S. Customs and Border Protection

19 CFR Part 102

CBP Dec. 12–15

TECHNICAL CORRECTIONS RELATING TO THE RULES OF ORIGIN FOR GOODS IMPORTED UNDER THE NAFTA AND FOR TEXTILE AND APPAREL PRODUCTS

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

ACTION: Final rule; technical corrections.

SUMMARY: This document sets forth technical corrections to part 102 of the U.S. Customs and Border Protection (CBP) regulations to reflect recent changes in the Harmonized Tariff Schedule of the United States. The affected provisions in part 102 of title 19 of the Code of Federal Regulations which are based in part on specified changes in tariff classification, comprise a codified system used for determining the country of origin of goods imported under the North American Free Trade Agreement (NAFTA), determining whether an imported good is a new or different article of commerce under the United States-Morocco Free Trade Agreement and the United States-Bahrain Free Trade Agreement, and for the country of origin of textile and apparel products (other than those of Israel).

DATES: This final rule is effective on September 25, 2012.

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

SUPPLEMENTARY INFORMATION:

Background

Section 102.20 of Title 19 of the CBP regulations (19 CFR 102.20) prescribes the tariff shift rules that are used to determine whether a good is considered a good of a NAFTA country (United States, Canada or Mexico). These tariff shift rules also determine whether an imported good is a new or different article of commerce under the United

States-Morocco Free Trade Agreement and the United States-Bahrain Free Trade Agreement. Section 102.21 provides the rules of origin relating to trade in textile and apparel products, other than those that are products of Israel.

Need for Correction

Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (codified at 19 U.S.C. 3005), the International Trade Commission (ITC) is required to keep the Harmonized Tariff Schedule of the United States (HTSUS) under continuous review and prepare investigations proposing modifications to the HTSUS to the President. In February 2010, the ITC issued Investigation No. 1205-7, Proposed Modifications to the Harmonized Tariff Schedule of the United States, Publication No. 8771. The modifications proposed in the report were effective on February 3, 2012, pursuant to Presidential Proclamation 8771 which was published in the **Federal Register** on January 4, 2012 (77 FR 413).

As a result of the 2012 modifications to the HTSUS, certain tariff provisions have been added or removed, and certain goods have been transferred, for tariff classification purposes, to different or newly-created tariff provisions. The changes to the HTSUS involve product coverage and/or numbering of certain headings and subheadings and are not intended to have any other substantive effect. Accordingly, this document makes technical corrections to §§ 102.20 and 102.21 in order for the regulations to conform the tariff shift rules to the current version of the HTSUS. In addition, this document also corrects typographical errors in certain subheadings of Chapter 90 that occurred when the regulations were updated for the 2007 HTSUS.

The examples set forth below illustrate the need for the technical corrections to §§ 102.20 and 102.21 described above.

Example 1: Pursuant to the existing terms of § 102.20(o), the tariff shift rule for subheading 8479.90, HTSUS, permits a tariff shift “to subheading 8479.90 from any other heading, except from heading 8501 when resulting from a simple assembly.” Prior to the 2012 amendments to the HTSUS, parts of water-jet cutting machines were classified in subheading 8479.90, HTSUS, and therefore was subject to the above tariff shift rule. This rule was satisfied when any good classified outside heading 8479, except goods classified in heading 8501, HTSUS, that resulted from a simple assembly, were processed into parts of water-jet cutting machines of subheading 8479.90, HTSUS. Under the 2012 amendments to the HTSUS, however, parts of water-jet cutting machines moved from subheading 8479.90, HTSUS, to heading 8466, HTSUS, a different heading. As a result, parts of water-jet cutting machines (now classified in heading 8466, HTSUS)

would presently satisfy the tariff shift rule set forth above, when it would not have satisfied it in its prior classification. In order to maintain the original result of the tariff shift rule for 8479.90, HTSUS, the tariff shift rule in § 102.20(o) must be amended to provide for “A change to subheading 8479.90 from any other heading, except from heading 8501 when resulting from a simple assembly and except from parts of water-jet cutting machines of heading 8466.”

Example 2: Under the 2012 amendments to the HTSUS, a heading was created at 3826, HTSUS, to provide for “biodiesel and mixtures thereof, not containing or containing less than 70% by weight of petroleum oils or oils obtained from bituminous minerals.” Prior to the 2012 amendments, these products were classified in the basket “other” provision under subheading 3824.90, HTSUS. As new heading 3826, HTSUS, is not included in the rules set forth in § 102.20(f), it is not possible to determine the origin of goods classifiable under this provision using the current regulations. Accordingly, § 102.20(f) must be amended in order to add heading 3826, HTSUS, and a new tariff shift rule added; furthermore, the tariff shift rule for subheading 3824.90 must be updated to reflect the shift in goods to the new heading 3826, HTSUS. It should be noted that these technical corrections to § 102.20(f) will produce the same result as when biodiesel and mixtures thereof, not containing or containing less than 70% by weight of petroleum oils or oils obtained from bituminous minerals were classified under subheading 3824.90, HTSUS, in the 2011 HTSUS.

Example 3: Under current § 102.20(d), there is a rule for subheadings 2009.41 through 2009.80, HTSUS. Under the 2012 amendments to the HTSUS, subheading 2009.80, HTSUS, which covers “Juice of any other single fruit or vegetable,” was deleted, with the goods moving to subheadings 2009.81 and 2009.89. As a result, the tariff shift rule for heading 2009.41–2009.80, HTSUS, has been renumbered to reflect that subheading 2009.80, HTSUS, was deleted, and reflect the new range of tariff subheadings. Thus the new rules provides for “A change to subheading 2009.41 through 2009.89 from any other chapter.”

Example 4: Under current § 102.20(d), there is a rule for subheadings 9031.41 through 9031.49, HTSUS. When this rule was updated in 2008 following changes to the 2007 HTSUS, it included references to subheadings 9030.41 through 9030.49, HTSUS, which are incorrect because no such subheadings exists in the tariff schedule. As a result, the 2012 technical update corrects the rule for subheadings 9031.41 through 9031.49, HTSUS. Please note that this change to

subheading numbers is being made solely to correct typographical errors and does not reflect any updates to the 2012 HTSUS.

Inapplicability of Notice and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), CBP has determined that it would be impracticable and contrary to the public interest to delay publication of this rule in final form pending an opportunity for public comment and that there is good cause for this final rule to become effective immediately upon publication. The technical corrections contained in this document merely conform the tariff shift rules in the regulations to the current HTSUS and will facilitate trade by ensuring that country of origin determinations made using the regulations are consistent with the HTSUS.

Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

Signing Authority

While the subject matter of this document pertains to the authority of the Secretary of the Treasury to approve regulations relating to certain revenue functions (see 19 CFR Part 0), CBP retains authority pursuant to Treasury Directive 28–01 to sign a document making nonsubstantive technical corrections to a previously issued regulation. For this reason, the CBP Commissioner is the proper official to sign this document.

List of Subjects in 19 CFR Part 102

Customs duties and inspections, Imports, Reporting and record-keeping requirements, Rules of origin, Trade agreements.

Amendments to the CBP Regulations

For the reasons set forth above, part 102 of title 19 of the Code of Federal Regulations (19 CFR part 102) is amended as set forth below:

PART 102—RULES OF ORIGIN

■ 1. The authority citation for part 102 continues to read as follows:

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

■ 2. In § 102.20:

■ a. The table is amended by removing the entries for: “0305.30”, “0305.41–0305.69”, “2903.41–2903.49”, “2903.51–2904.90”, “2914.21–2914.22”, “4808.20–4808.30”, “6406.20–6406.99”, “6505.10”, “6811.83”, “8452.30–8452.40”, “9007.11–9007.19”, “9008.10–9008.40”, and “9504.10– 9506.29”;

■ b. The table is further amended by adding, in numerical order, entries for: “0305.31–0305.39”, “0305.41–0305.79”, “0308”, “2903.71–2903.79”, “2903.81–2904.90”, “2914.22”, “3826.00”, “4808.40”, “6406.20–6406.90”, “6505.00”, “8452.30”, “9007.10”, “9008.50”, “9504.20–9506.29”, and “9619.00”;

■ c. The table is further amended by revising the entries in the “Tariff shift and/or other requirements” column adjacent to the “HTSUS” column listing for: “0306”, “0307”, “1601–1605”, “2009.41–2009.80”, “2826.12–2833.19”, “2835.29–2835.39”, “2842.10”, “2848”, “2849.10–2849.90”, “2850”, “2852”, “2933.11–2934.99”, “2937–2941”, “3002.10–3002.90”, “3201.10–3202.90”, “3501.10–3501.90”, “3502.20–3502.90”, “3503–3504”, “3808.99”, “3824.71–3824.90”, “3901–3915”, “3922–3926”, “4817–4822”, “7411–7418”, “8425.11–8430.69”, “8452.90”, “8456.10–8456.90”, “8466.10–8466.94”, “8479.10–8479.89”, “8479.90”, “8507.10–8507.80”, “9031.41–9031.49” and “9608.10–9608.40”.

The additions and revisions read as follows:

§ 102.20 Specific rules by tariff classification.

* * * * *

HTSUS	Tariff shift and/or other requirements
* * * * *	
0305.31–0305.39 ...	A change to subheading 0305.31 through 0305.39 from any other subheading outside that group, except from fillets of heading 0304.
0305.41–0305.79 ...	A change to subheading 0305.41 through 0305.79 from any other chapter.
306.00.....	A change to heading 0306, other than a change to smoked goods of heading 0306, from any other chapter; or

HTSUS	Tariff shift and/or other requirements
	A change to smoked goods of heading 0306 from other goods of chapter 3 or from any other chapter, except from chapter 16; or
	A change to any good of heading 0306 from a smoked good of heading 0306.
307.00	A change to heading 0307, other than a change to smoked goods of heading 0307, from any other chapter; or
	A change to edible meals and flours from within chapter 3; or
	A change to smoked goods of heading 0307 from other goods of chapter 3 or from any other chapter, except from chapter 16; or
	A change to any good of heading 0307 from a smoked good of heading 0307.
308.00	A change to heading 0308, other than a change to smoked goods of heading 0308, from any other chapter; or
	A change to edible meals and flours from within chapter 3; or
	A change to smoked goods of heading 0308 from any other good of chapter 3 or from any other chapter, except from chapter 16; or
	A change to any good of heading 0308 from a smoked good of heading 0308.
* * * * *	
1601–1605	A change to heading 1601 through 1605 from any other chapter, except from smoked products of heading 0306 through 0308.
* * * * *	
2009.41–2009.80 ...	A change to subheading 2009.41 through 2009.89 from any other chapter.
* * * * *	
2826.12–2833.19 ...	A change to fluorides of ammonium or of sodium of subheading 2826.19 from any other good of subheading 2826.19 or from any other subheading; or
	A change to any other good of subheading 2826.19 from fluorides of ammonium or of sodium of subheading 2826.19 or from any other subheading; or
	A change to fluorosilicates of sodium or of potassium of subheading 2826.90 from any other good of subheading 2826.90 or from any other subheading; or
	A change to any other good of subheading 2826.90 from fluorosilicates of sodium or of potassium of subheading 2826.90 or from any other subheading; or

HTSUS	Tariff shift and/or other requirements
	A change to chlorides of iron of subheading 2827.39 from any other good of subheading 2827.39 or from any other subheading; or
	A change to chlorides of cobalt of subheading 2827.39 from any other good of subheading 2827.39 or from any other subheading; or
	A change to chlorides of zinc of subheading 2827.39 from any other good of subheading 2827.39 or from any other subheading; or
	A change to any other good of subheading 2827.39 from chlorides of iron, of cobalt, or of zinc of subheading 2827.39 or from any other subheading; or
	A change to zinc sulphide of subheading 2830.90 from any other good of subheading 2830.90 or from any other subheading; or
	A change to cadmium sulphide of subheading 2830.90 from any other good of subheading 2830.90 or from any other subheading; or
	A change to any other good of subheading 2830.90 from zinc sulphide or cadmium sulphide of subheading 2830.90 or from any other subheading; or
	A change to subheading 2826.12 through 2833.19 from any other subheading, including another subheading within that group, except for a change from sulphides and polysulphides, of subheading 2852.90 to subheading 2830.90.
* * * * *	
2835.29–2835.39 ...	A change to phosphates of trisodium of subheading 2835.29 from any other good of subheading 2835.29 or from any other subheading; or
	A change to any other good of subheading 2835.29 from phosphates of trisodium of subheading 2835.29 or from any other subheading; or
	A change to subheading 2835.29 through 2835.39 from any other subheading, including another subheading within that group, except for a change from phosphinates (hypophosphites), phosphonates (phosphites) and phosphates, and polyphosphates of subheading 2852.90 to subheading 2835.39.
* * * * *	
2842.10	A change to subheading 2842.10 from any other subheading, except for a change from double or complex silicates, including aluminosilicates, of subheading 2852.90 to subheading 2842.10.
* * * * *	

HTSUS	Tariff shift and/or other requirements
2848.00	A change to heading 2848 from any other heading, except for a change from phosphides, excluding ferrophosphorus, of subheading 2852.90.
2849.10–2849.90 ...	A change to subheading 2849.10 through 2849.90 from any other subheading, including another subheading within that group, except for a change from carbides of 2852.90.
2850.00	A change to heading 2850 from any other heading, except for a change from hydrides, nitrides, azides, silicides, and borides (other than compounds which are also carbides of heading 28.49) of subheading 2852.90.
2852.00	<p>A change to other metal oxides, hydroxides or peroxides of heading 2852 from any other good of heading 2852 or from any other heading, provided that the good is the product of a “chemical reaction”, as defined in Note 1, except from subheading 2825.90; or</p> <p>A change to other fluorides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2826.19; or</p> <p>A change to other chlorides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2827.39; or</p> <p>A change to other bromides or to bromide oxides from any other good of heading 2852 or from any other heading, except from subheading 2827.59; or</p> <p>A change to iodides or to iodide oxides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2827.60; or</p> <p>A change to other chlorates of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2829.19; or</p> <p>A change to other perchlorates, bromates, perbromates, iodates or periodates of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2829.90; or</p> <p>A change to other sulphides or polysulphides, whether or not chemically defined, of heading 2852 from any other good of heading 2852 (except for sulphides or polysulphides of subheading 2852.90) or from any other heading, except from subheading 2830.90; or</p> <p>A change to other sulfates of heading 2852 from any other good of heading 2852 or from any other heading, except from heading 2520 or from subheading 2833.29; or</p>

HTSUS	Tariff shift and/or other requirements
	A change to other nitrates of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2834.29; or
	A change to other phosphates from any other good of heading 2852 or from any other heading, except from subheading 2835.29; or
	A change to polyphosphates other than those of sodium triphosphate (sodium tripolyphosphate) of subheading 2852.90 from any other good of heading 2852 or from any other heading, except from subheading 2835.39; or
	A change to other cyanides or to cyanide oxides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2837.19; or
	A change to complex cyanides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2837.20; or
	A change to fulminates, cyanates or thiocyanates of heading 2852 from any other good of heading 2852 or from any other heading; or
	A change to any other good of subheading 2852.90 from fulminates, cyanates, and thiocyanates of subheading 2852.90 or from any other subheading, provided that the good classified in subheading 2852.90 is the product of a “chemical reaction” as defined in Note 1; or
	A change to other chromates, dichromates or peroxychromates of heading 2852 from any other good of heading 2852 or any other heading, except from heading 2610, or from subheading 2841.50; or
	A change to double or complex silicates, including aluminosilicates, of subheading 2852.90 from any other good of heading 2852 or from any other heading, except from subheading 2842.10; or
	A change to other salts of inorganic acids or to peroxyacids, other than azides, of heading 2852 from any other good of heading 2852 or from any other heading, provided that the good classified in heading 2852 is the product of a “chemical reaction” as defined in Note 1, except from subheading 2842.90; or
	A change to other silver compounds of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2843.29; or
	A change to phosphides, excluding ferrophosphorus, of subheading 2852.90 from any other good of heading 2852 or any other heading, except from heading 2848; or

HTSUS	Tariff shift and/or other requirements
	A change to carbides of 2852.90 from any other good of heading 2852 or any other heading, except from subheading 2849.90; or
	A change to hydrides, nitrides, azides, silicides and borides, other than compounds which are also carbides of heading 2849, of subheading 2852.90 from any other good of heading 2852 or any other heading, except from heading 2850; or
	A change to derivatives containing only sulpho groups, their salts and esters from any other good of heading 2852 or from any other heading, except from heading 2908; or
	A change to palmitic acid, stearic acid, their salts or their esters from any other good of heading 2852 or from any other heading, except from subheading 2915.70; or
	A change to oleic, linolenic or linolenic acids, their salts or their esters from any other good of heading 2852 or from any other heading, except from subheading 2916.15; or
	A change to benzoic acid, its salts or its esters from any other good of heading 2852 or from any other heading, except from subheading 3301.90 or subheading 2916.31; or
	A change to lactic acid, its salts or its esters from any other good of heading 2852 or from any other heading, except 2918.11; or
	A change to other organo-inorganic compounds of heading 2852 from any other good of heading 2852 or from any other heading, except from heading 2931; or
	A change to nucleic acids and their salts or other heterocyclic compounds of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 2934.99; or
	A change to tanning extracts of vegetable origin or tannins and their salts, ethers, esters, and other derivatives of 2852.90 from any other good of heading 2852 or any other heading, except from subheading 3201.90; or
	A change to caseinate and other casein derivatives or casein glues of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 3501.90; or
	A change to albumins, albuminates, and other albumin derivatives of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 3502.90; or

HTSUS	Tariff shift and/or other requirements
	<p>A change to peptones and their derivatives, other protein substances and their derivatives, not elsewhere specified or included, or hide powder of subheading 2852.90 from any other good of heading 2852 or any other heading, except from heading 3504; or</p> <p>A change to naphthenic acids, their water-insoluble salts, or their esters of subheading 2852.90 from any other good of heading 2852 or any other heading; or</p> <p>A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 2852.90 from naphthenic acids, their water-insoluble salts, or their esters of subheading 2852.90 or any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3824.71, or 3824.73 through 3824.79; or</p> <p>A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 2852.90 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.</p>
* * * * *	
2903.71–2903.79 ...	A change to subheading 2903.71 through 2903.79 from any other subheading outside that group.
2903.81–2904.90 ...	<p>A change to aldrin (ISO), chlordane (ISO) or heptachlor (ISO) of subheading 2903.82 from any other subheading, except from subheading 2903.89; or</p> <p>A change to any other good of subheading 2903.89 from any other subheading, except from subheading 2903.82; or</p> <p>A change to subheading 2903.81 through 2904.90 from any other subheading within that group.</p>
* * * * *	
2914.22	A change to subheading 2914.22 from any other subheading, including another subheading within that group.
* * * * *	

HTSUS	Tariff shift and/or other requirements
2933.11–2934.99 ...	2933.11–2934.99: A change to subheading 2933.11 through 2934.99 from any other subheading, including another subheading within that group, except for a change to subheading 2933.29 from heterocyclic compounds with nitrogen hetero-atom(s) only of subheading 3002.10 and except for a change to subheading 2934.99 from nucleic acids and their salts or other heterocyclic compounds of subheading 2852.90 or subheading 3002.10.
* * * * *	
2937–2941	A change to heading 2937 through 2941 from any other heading, including another heading within that group, except a change to concentrates of poppy straw of subheading 2939.11 from poppy straw extract of subheading 1302.19 and except for a change to subheading 2937.90 from other hormones, prostagladins, thromboxanes and leukotrienes, natural or reproduced by synthesis, derivatives and structural analogues thereof, including chain modified polypeptides, used primarily as hormones of subheading 3002.10.
* * * * *	
3002.10–3002.90 ...	<p>A change to subheading 3002.10 through 3002.90 from any other subheading including another subheading within that group, except a change from subheading 3006.92; or</p> <p>A change to imines and their derivatives, and salts thereof, other than chlordimeform (ISO) of subheading 3002.10 from any other subheading, except subheadings 2925.21 through 2925.29; or</p> <p>A change to compounds containing an unfused imidazole ring (whether or not hydrogenated) in the structure of subheading 3002.10 from any other subheading, except from subheading 2933.29; or</p> <p>A change to nucleic acids and their salts or other heterocyclic compounds (other than those classified in subheadings 2934.10 through 2934.91) of subheading 3002.10 from any other subheading, except from subheading 2934.99; or</p> <p>A change to hormones, prostaglandins, thromboxanes and leukotrienes, natural or reproduced by synthesis or derivatives, and structural analogues thereof, including chain modified polypeptides, used primarily as hormones (other than those classified in subheadings 2937.11 through 2937.50) of subheading 3002.10 from any other heading, except from heading 2937; or</p>

HTSUS	Tariff shift and/or other requirements
	A change to other polyethers of subheading 3002.10 from any other heading, except from heading 3907, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer count.
* * * * *	
3201.10–3202.90 ...	A change to subheading 3201.10 through 3202.90 from any other subheading, including another subheading within that group, except for a change to subheading 3201.90 from tanning extracts of vegetable origin or tannins and their salts, ethers, esters, and other derivatives, of subheading 2852.90.
* * * * *	
3501.10–3501.90 ...	A change to subheading 3501.10 through 3501.90 from any other subheading, including another subheading within that group, except for a change to subheading 3501.90 from caseinates and other casein derivatives or casein glues of subheading 2852.90.
* * * * *	
3502.20–3502.90 ...	A change to subheading 3502.20 through 3502.90 from any other subheading, including another subheading within that group, except for a change to subheading 3502.90 from albumins (including concentrates of two or more whey proteins, containing by weight more than 80 percent whey proteins, calculated on the dry matter), albuminates, and other albumin derivatives of 2852.90.
3503–3504	A change to heading 3503 through 3504 from any other heading, including another heading within that group, except for a change to subheading 3504.00 from peptones and their derivatives or other protein substances and their derivatives or hide powder of 2852.90.
* * * * *	
3808.99	A change to subheading 3808.99 from any other subheading, except from rodenticides or other pesticides classified in chapter 28 or 29 or subheading 3808.50; or A change to a mixture of subheading 3808.99 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients, except from rodenticides or other pesticides classified in chapter 28 or 29 or subheading 3808.50.
* * * * *	

HTSUS	Tariff shift and/or other requirements
3824.71–3824.90 ...	<p>A change to subheading 3824.71 from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3824.71 or from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound; or</p> <p>A change to other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included of subheading 3824.71 from any other good of subheading 3824.71 or from any other subheading, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3824.73 through 3824.79, 3824.90, or 3826.00; or</p> <p>A change to subheading 3824.72 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.73 through 3824.79; or</p> <p>A change to other mixtures of halogenated hydrocarbons of subheading 3824.73 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3824.71, or 3824.74 through 3824.79, 3824.90, or 3826.00; or</p> <p>A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.73 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.72, or 3824.74 through 3824.79; or</p>

HTSUS	Tariff shift and/or other requirements
	<p>A change to other mixtures of halogenated hydrocarbons of subheading 3824.74 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3824.71, 3824.73, 3824.75 through 3824.79, or 3826.00, and except from subheading 3824.90; or</p>
	<p>A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.73 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.72, or 3824.74 through 3824.79; or</p>
	<p>A change to other mixtures of halogenated hydrocarbons of subheading 3824.74 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3824.71, 3824.73, 3824.75 through 3824.79, or 3826.00, and except from subheading 3824.90; or</p>
	<p>A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.74 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.72 through 3824.73 and subheading 3824.75 through 3824.79; or</p>

HTSUS	Tariff shift and/or other requirements
	A change to subheading 3824.75 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3824.71, 3824.73 through 3824.74, subheading 3824.76 through 3824.79, 3824.90, or 3826.00; or
	A change to subheading 3824.76 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3824.71, 3824.73 through 3824.75, 3824.77 through 3824.79, 3824.90, or 3826.00; or
	A change to subheading 3824.77 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3824.71, 3824.73 through 3824.76, 3824.78 through 3824.79, 3824.90, or 3826.00; or
	A change to subheading 3824.78 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.72 through 3824.77 or 3824.79; or

HTSUS	Tariff shift and/or other requirements
	A change to mixtures of halogenated hydrocarbons of subheading 3824.79 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included of subheading 2852.90, 3824.71, 3824.73 through 3824.78, or 3826.00, and except from subheading 3824.90; or
	A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.79 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3824.72 through 3824.78;
	A change to naphthenic acids, their water-insoluble salts or their esters of subheading 3824.90 from any other good of subheading 3824.90 or from any other subheading; or
	A change to any other good of subheading 3824.90 from naphthenic acids, their water-insoluble salts or their esters of subheading 3824.90 or from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3824.71, or 3824.73 through 3824.79; or
	A change to any other good of subheading 3824.71 through 3824.90 from any other subheading, including another subheading within that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.

* * * * *

HTSUS	Tariff shift and/or other requirements
3826.00	A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 3826.00 from naphthenic acids, their water-insoluble salts, or their esters of subheading 3826.00 or any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3824.71, or 3824.73 through 3824.79; or A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 3826.00 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
* * * * *	
3901–3915	A change to heading 3901 through 3915 from any other heading, including another heading within that group, except a change to 3907 from other polyethers of subheading 3002.10, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer content.
* * * * *	
3922–3926	A change to heading 3922 through 3926 from any other subheading, including another heading within that group, except for a change to heading 3926 from articles of apparel and clothing accessories, other articles of plastics, or articles of other materials of headings 3901 to 3914 of heading 9619.
* * * * *	
4808.40	A change to subheading 4808.40 from any other heading, except from heading 4804.
* * * * *	
4817–4822	A change to heading 4817 through 4822 from any other heading, including another heading within that group, except for a change to heading 4818 from sanitary towels and tampons, napkin and napkin liners for babies, and similar sanitary articles, of paper pulp, paper, cellulose wadding, or webs of cellulose fibers, of heading 9619.
* * * * *	
6406.20–6406.90 ...	A change to subheading 6406.20 through 6406.90 from any other chapter.

HTSUS	Tariff shift and/or other requirements
6505.00.....	A change to hair-nets of subheading 6505.00 from any other subheading.
* * * * *	
7411-7418	A change to cooking or heating apparatus of a kind used for domestic purposes, non-electric and parts thereof, of copper, of subheading 7418.10 from any other good of subheading 7418.10 or from any other subheading; or A change to any other good of subheading 7418.10 from cooking or heating apparatus of a kind used for domestic purposes, non-electric and parts thereof, of copper, of subheading 7418.10 or from any other subheading; or A change to any other good of heading 7411 through 7418 from any other heading, including another heading within that group.
* * * * *	
8425.11-8430.69 ...	... A change to pit-head winding gears or to winches specially designed for use underground of subheading 8425.31 through 8425.39 from any other good of subheading 8425.31 through 8425.39 or from any other subheading; or A change to any other good of subheading 8425.31 through 8425.39 from pit-head winding gears or to winches specially designed for use underground of subheading 8425.31 through 8425.39 from any other good of subheading 8425.31 through 8425.39 or from any other subheading; or A change to mine wagon pushers, locomotive or wagon tracers, wagon tippers and similar railway wagon handling equipment of subheading 8428.90 from any other good of subheading 8428.90 or from any other subheading; or A change to any other good of subheading 8428.90 from mine wagon pushers, locomotive or wagon tracers, wagon tippers and similar railway wagon handling equipment of subheading 8428.90 or from any other subheading; or A change to any other good of subheading 8425.11 through 8430.69 from any other subheading, including another subheading within that group, except for a change to subheading 8428.90 from passenger boarding bridges of subheadings 8479.71 or 8479.79.
* * * * *	
8452.30.....	A change to subheading 8452.30 from any other subheading. 8452.90

HTSUS	Tariff shift and/or other requirements
8452.90	<p>A change to goods of subheading 8452.90, other than a change to furniture, bases and covers for sewing machines, and parts thereof, from any other heading, except from heading 8501 when resulting from a simple assembly; or</p> <p>A change to furniture, bases and covers for sewing machines, and parts thereof from any other good of 8452.90 or from any other subheading.</p>
* * * * *	
8456.10–8456.90 ...	<p>A change to subheading 8456.10 through 8456.90 from any other heading, other than a change to water-jet cutting machines of subheading 8456.90, except from machine-tools for dry-etching patterns on semiconductor materials of subheading 8486.20; or</p> <p>A change to water-jet cutting machines of subheading 8456.90 from any other good of subheading 8456.90 or from any other subheading, except from subheading 8479.89 or from subheading 8486.10 through 8486.40.</p>
* * * * *	
8466.10–8466.94 ...	<p>A change to subheading 8466.10 through 8466.94, other than a change to parts of water-jet cutting machines of subheading 8466.93, from any other heading outside that group, except from heading 8501 when resulting from a simple assembly; or</p> <p>A change to parts of water-jet cutting machines of subheading 8466.93 from any other good of heading 8466 or from any other heading, except from heading 8479 or from heading 8501 when resulting from a simple assembly.</p>
* * * * *	
8479.10–8479.89 ...	<p>A change to subheading 8479.10 through 8479.89, other than a change to passenger boarding bridges of subheading 8479.71 or 8479.79, from any other subheading, including another subheading within that group, except from subheading 8486.10 through 8486.40 and except for a change to 8479.89 from water-jet cutting machines of 8456.90; or</p> <p>A change to passenger boarding bridges of subheading 8479.71 or 8479.79 from any other subheading.</p>
8479.90	<p>A change to subheading 8479.90 from any other heading, except from heading 8501 when resulting from a simple assembly and except from parts of water-jet cutting machines of heading 8466.</p>
* * * * *	

HTSUS	Tariff shift and/or other requirements
8507.10–8507.80 ...	A change to subheading 8507.10 through 8507.80 from any other subheading, including another subheading within that group, except for a change to subheading 8507.80 from subheading 8507.50 or 8507.60.
* * * * *	
9007.10.....	A change to subheading 9007.10 from any other good of subheading 9007.10 or from any other subheading.
* * * * *	
9008.50.....	A change to subheading 9008.50 from any other good of subheading 9008.50 or from any other subheading.
* * * * *	
9031.41–9031.49 ...	A change to profile projectors of subheading 9031.49 from any other good of subheading 9031.49 or from any other subheading; or A change to any other good of subheading 9031.49 from a profile projector of subheading 9031.49 or from any other subheading, except from subheading 9031.41; or A change to any other good of subheading 9031.41 through 9031.49 from any other subheading outside that group.
* * * * *	
9504.20–9506.29 ...	A change to subheading 9504.20 through 9506.29 from any other subheading, including another subheading within that group.
* * * * *	
9608.10–9608.40 ...	A change to subheading 9608.10 through 9608.40 from any other subheading, including another subheading within that group; or A change to India ink drawing pens of subheading 9608.30 from any other good of subheading 9608.30; or A change to any other good of subheading 9608.30 from India ink drawing pens of subheading 9608.30.
* * * * *	
9619.00.....	A change to a plastic good of subheading 9619.00 from any other heading, except from heading 3926; or A change to a paper good of subheading 9619.00 from any other heading, except from heading 4818.
* * * * *	

■ 3. In § 102.21:

■ a. Paragraph (b)(5) is amended by removing the reference to “4202.92.05”;

■ b. Paragraph (b)(5) is further amended by adding, in numerical order, the reference to “4202.92.04–08”;

■ c. The table in paragraph (e)(1) is amended by removing the entries for: “4202.92.05”, “6210–6211”, “6212”, “6406.99.15”, and “6505.90”, ;

■ d. The table in paragraph (e)(1) is further amended by adding, in numerical order, entries for: “4202.92– 04–4202.92.08”, “6210–6212”, “6406.90.15”, “6505.00”, and “9619”;

■ e. The table in paragraph (e)(1) is further amended by revising the entries in the “Tariff shift and/or other requirements” column adjacent to the HTSUS” column listing for: “5601”, “6101–6117”, “6201–6208”, and “6209.20.5045–6209.90.9000”.

The additions and revisions read as follows:

§ 102.21 Textile and apparel products.

* * * * *

(e) * * * (1) * * *

HTSUS	Tariff shift and/or other requirements
* * * * *	
4202.92.04– 4202.92.08	A change to subheadings 4202.92.04 through 4202.92.08 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory or insular possession.
* * * * *	
5601	(1) A change to wadding of heading 5601 from any other heading, except from heading 5105, 5203, 5501 through 5507, and articles of wadding of heading 9619. (2) A change to flock, textile dust, mill neps, or articles of wadding, of heading 5601 from any other heading or from wadding of heading 5601.
* * * * *	
6101–6117	(1) If the good is not knit to shape and consists of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
	(2) If the good is not knit to shape and does not consist of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to heading 6101 through 6117 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, knitted or crocheted articles of heading 9619, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
	(3) If the good is knit to shape, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to 6101 through 6117 from any heading outside that group, except from knitted or crocheted articles of heading 9619, provided that the knit to shape components are knit in a single country territory or insular possession.
6201–6208	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more component parts, a change to heading 6201 through 6208 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6217, subheading 6307.90, and from an assembled women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article of heading 9619, and provided that the change is the result of a fabric-making process.
	* * * * *
6209.20.5045–	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.90.9000. 6209.20.5045 through 6209.90.9000 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
	(2) If the good does not consist of two or more component parts, a change to subheading 6209.20.5045 through 6209.90.9000 from any heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6217, subheading 6307.90, and from babies' garments and clothing accessories of heading 9619, and provided that the change is the result of a fabric-making process.
* * * * *	
6210–6212	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more component parts, a change to heading 6210 through 6212 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, subheading 6307.90, and from an assembled women's or girls' garment, made up of fabrics of heading 5602, 5603, 5903, 5906, or 5907, of heading 9619 or a girls', boys', men's, or women's garment, other than knitted or crocheted garments and other than a women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article from any other heading, provided that the change is the change is the result of a fabric-making process.
* * * * *	
6406.90.15	(1) If the good consists of two or more components, a change to subheading 6406.90.15 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
	(2) If the good does not consist of two or more components, a change to subheading 6406.90.15 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
* * * * *	
6505.00	(1) For felt hats and other felt headgear, made from the hat bodies, hoods or plateaux of heading 6501, whether or not lined or trimmed, if the good consists of two or more components, a change to subheading 6505.00 from any other good of subheading 6505.00 or from any other subheading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) For felt hats and other felt headgear, made from the hat bodies, hoods or plateaux of heading 6501, whether or not lined or trimmed, if the good does not consist of two or more components, a change to subheading 6505.00 from any other subheading, except from heading 5602, and provided that the change is the result of a fabric making process.
	(3) For any other good, if the good consists of two or more components, a change to goods of subheading 6505.00, other than hair-nets, from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(4) For any other good, if the good does not consist of two or more components, a change to goods of subheading 6505.00, other than hair-nets, from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5609, 5801 through 5804, 5806, 5808 through 5811, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
* * * * *	
9619	(1) A change to articles of wadding of heading 9619 from any other heading, except from heading 5105, 5203, 5501 through 5507, and from 5601; or

HTSUS	Tariff shift and/or other requirements
	(2) If the good is not knit to shape and consists of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to an assembled knitted or crocheted article of heading 9619, from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession; or
	(3) If the good is not knit to shape and does not consist of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to a knitted or crocheted article of heading 9619 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, 6101 through 6117; and subheading 6307.90, and provided that the change is the result of a fabric-making process; or
	(4) If the good is knit to shape, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to a knitted or crocheted article of heading 9619 from any other heading, except from heading 6101 through 6117, provided that the knit to shape components are knit in a single country, territory, or insular possession; or
	(5) If the good consists of two or more component parts, a change to an assembled women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article of heading 9619 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession; or
	(6) If the good does not consist of two or more component parts, a change to a women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article of heading 9619 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6201 through 6208, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process; or

HTSUS

Tariff shift and/or other requirements

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- (7) The country of origin of a baby diaper of cotton classifiable in heading 9619 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process; or
- (8) If the good consists of two or more component parts, a change to an assembled baby garment of synthetic fiber or artificial fiber of heading 9619 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession; or
- (9) If the good does not consist of two or more component parts, a change to a baby garment of synthetic fiber or artificial fiber of heading 9619 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6209, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process; or
- (10) If the good consists of two or more component parts, a change to an assembled women's or girls' garment, made up of fabrics of heading 5602, 5603, 5903, 5906, or 5907, of heading 9619 or a girls', boys', men's, or women's garment, other than knitted or crocheted garments and other than a women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article, from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession;
- (11) If the good does not consist of two or more component parts, a change to an assembled women's or girls' garment, made up of fabrics of heading 5602, 5603, 5903, 5906, or 5907, of heading 9619 or a girls', boys', men's, or women's garment, other than knitted or crocheted garments and other than a women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, 6210 through 6212, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process; or
-

HTSUS	Tariff shift and/or other requirements
* * * * *	(12) The country of origin of an other made up article of heading 9619 is the country, territory, or insular possession in which the woven fabric component of the good was formed by a fabric-making process.

Dated: September 18, 2012.

DAVID V. AGUILAR,
Deputy Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, September 25, 2012 (77 FR 58931)]

DEPARTMENT OF THE TREASURY
19 CFR Parts 10, 24, 162, 163, and 178

[USCBP-2012-0017; CBP Dec. 12-16]

RIN 1515-AD88

**UNITED STATES-COLOMBIA TRADE PROMOTION
 AGREEMENT**

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

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This rule amends the U.S. Customs and Border Protection (CBP) regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States-Colombia Trade Promotion Agreement entered into by the United States and the Republic of Colombia.

DATES: Interim rule effective September 26, 2012; comments must be received by November 26, 2012.

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 US-CBP-2012-0017.

- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229–1179.

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

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Textile Operational Aspects: Nancy Mondich, Trade Policy and Programs, Office of International Trade, (202) 863–6524.

Other Operational Aspects: Katrina Chang, Trade Policy and Programs, Office of International Trade, (202) 863–6532.

Legal Aspects: Karen Greene, Regulations and Rulings, Office of International Trade, (202) 325–0041.

SUPPLEMENTARY INFORMATION:

Public Participation

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

Background

On November 22, 2006, the United States and Colombia (the “Parties”) signed the United States-Colombia Trade Promotion Agreement (“CTPA” or “Agreement”), and on June 28, 2007, the Parties signed a protocol amending the Agreement. The CTPA provides for reciprocal trade liberalization between the United States and Colombia. It is a comprehensive, trade opening agreement that will eliminate tariffs and other barriers to trade, open each country’s market for service providers, and promote investment.

On October 21, 2011, the President signed into law the United States-Colombia Trade Promotion Agreement Implementation Act (the “Act”), Public Law 112–42, 125 Stat. 462 (19 U.S.C. 3805 note), which approved and made statutory changes to implement the CTPA. Section 103 of the Act requires that regulations be prescribed as necessary to implement the provisions of the CTPA.

On May 14, 2012, the President signed Proclamation 8818 to implement the CTPA. The Proclamation, which was published in the **Federal Register** on May 18, 2012, (77 FR 29519), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of Publication 4320 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 34, incorporating the relevant CTPA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the CTPA where the special program indicator “CO” appears in parenthesis in the “Special” rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XXI to Chapter 99 to provide for temporary tariff-rate quotas and applicable safeguards implemented by the CTPA, as well as modifications to Subchapter XXII of HTSUS Chapter 98. After the Proclamation was signed, CBP issued instructions to the field and the public implementing the Agreement by allowing the trade to receive the benefits under the CTPA effective on or after May 15, 2012.

U.S. Customs and Border Protection (“CBP”) is responsible for administering the provisions of the CTPA and the Act that relate to the importation of goods into the United States from Colombia. Those customs-related CTPA provisions, which require implementation through regulation, include certain tariff and non-tariff provisions within Chapter One (Initial Provisions and General Definitions), Chapter Two (National Treatment and Market Access for Goods), Chapter Three (Textiles and Apparel), Chapter Four (Rules of Origin and Origin Procedures), and Chapter Five (Customs Administration and Trade Facilitation).

Certain general definitions set forth in Chapter One of the CTPA have been incorporated into the CTPA implementing regulations. These regulations also implement Article 2.6 (Goods Re-entered After Repair or Alteration) of the CTPA.

Chapter Three of the CTPA sets forth provisions relating to trade in textile and apparel goods between Colombia and the United States. The provisions within Chapter Three that require regulatory action by CBP are Articles 3.2 (Customs Cooperation and Verification of Origin), Article 3.3 (Rules of Origin, Origin Procedures, and Related Matters), and Article 3.5 (Definitions).

Chapter Four of the CTPA sets forth the rules for determining whether an imported good is an originating good of a Party and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment under the CTPA as specified in the Agreement and the HTSUS. The basic rules of origin in Section A of Chapter Four are set forth in General Note 34, HTSUS.

Under Article 4.1 of Chapter Four and section 203(b) of the Act, originating goods may be grouped in three broad categories: (1) Goods that are wholly obtained or produced entirely in the territory of one or both of the Parties; (2) goods that are produced entirely in the territory of one or both of the Parties and that satisfy the product-specific rules of origin in CTPA Annex 4.1 (Specific Rules of Origin; change in tariff classification requirement and/or regional value content requirement) or Annex 3–A (Textile and Apparel Specific Rules of Origin) and all other applicable requirements of Chapter Four; and (3) goods that are produced entirely in the territory of one or both of the Parties exclusively from originating materials. Article 4.2 (section 203(c) of the Act) sets forth the methods for calculating the regional value content of a good. Articles 4.3 and 4.4 (section 203(d) of the Act) set forth the rules for determining the value of materials for purposes of calculating the regional value content of a good. Article 4.5 (section 203(e) of the Act) provides that production that takes place in the territory of one or both of the Parties may be accumulated such that, provided other requirements are met, the resulting good is considered originating. Article 4.6 (section 203(f) of the Act) provides a *de minimis* criterion. The remaining Articles within Section A of Chapter Four consist of additional sub-rules applicable to the originating good concept, involving: fungible goods and materials (Article 4.7; section 203(g) of the Act); accessories, spare parts, and tools (Article 4.8; section 203(h) of the Act); sets of goods (Article 4.9; section 203(m) of the Act); packaging materials and containers for retail sale (Article 4.10; section 203(i) of the Act); packing materials and containers for shipment (Article 4.11; section 203(j) of the Act); indirect materials

(Article 4.12; section 203(k) of the Act); transit and transshipment (Article 4.13; section 203(l) of the Act); and consultation and modifications (Article 4.14). All Articles within Section A are reflected in the CTPA implementing regulations, except for Article 4.14 (Consultation and Modifications).

Section B of Chapter Four sets forth procedures that apply under the CTPA in regard to claims for preferential tariff treatment. Specifically, Section B includes provisions concerning: claims for preferential tariff treatment (Article 4.15); exceptions to the certification requirement (Article 4.16); recordkeeping requirements (Article 4.17); verification of preference claims (Article 4.18); obligations relating to importations (Article 4.19) and exportations (Article 4.20); common guidelines (Article 4.21); implementation (Article 4.22); and definitions of terms used within the context of the rules of origin (Article 4.23). All Articles within Section B, except for Articles 4.21 (Common Guidelines) and 4.22 (Implementation) are reflected in these implementing regulations.

Chapter Five sets forth operational provisions related to customs administration and trade facilitation under the CTPA. Article 5.9 (section 205 of the Act), concerning the general application of penalties to CTPA transactions, is the only provision within Chapter Five that is reflected in the CTPA implementing regulations.

The majority of the CTPA implementing regulations set forth in this document have been included within Subpart T in Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which CTPA implementation is more appropriate in the context of an existing regulatory provision, the CTPA regulatory text has been incorporated in an existing Part within the CBP regulations. In addition, this document sets forth several cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new CTPA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

Discussion of Amendments

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in Colombia for which, as in the case of goods originating in Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, Peru, or Korea, no bond or other security will be required when imported

temporarily for prescribed uses. The provisions of CTPA Article 2.5 (Temporary Admission of Goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart T

General Provisions

Section 10.3001 outlines the scope of Subpart T, Part 10 of the CBP regulations. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart T, Part 10, are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart T, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.3002 sets forth definitions of common terms used within Subpart T, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 1.3 and Annex 1.3 of the CTPA, and section 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions that apply in a more limited Subpart T, Part 10, context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.3003 sets forth the procedure for claiming CTPA preferential tariff treatment at the time of entry and, as provided in CTPA Article 4.15.1, states that an importer may make a claim for CTPA preferential tariff treatment based on a certification by the importer, exporter, or producer or the importer's knowledge that the good is an originating good. Section 10.3003 also provides, consistent with CTPA Article 4.19.4(d), that when an importer has reason to believe that a claim is based on inaccurate information, the importer must correct the claim and pay any duties that may be due.

Section 10.3004, which is based on CTPA Articles 4.15 and 4.19.4, requires a U.S. importer, upon request, to submit a copy of the certification of the importer, exporter, or producer if the certification forms the basis for the claim. Section 10.3004 specifies the information that must be included on the certification, sets forth the circumstances under which the certification may be prepared by the ex-

porter or producer of the good, and provides that the certification may be used either for a single importation or for multiple importations of identical goods.

Section 10.3005 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment. Section 10.3006, which is based on CTPA Article 4.16, provides that the certification is not required for certain non-commercial or low-value importations.

Section 10.3007 implements CTPA Article 4.17 concerning the maintenance of relevant records regarding the imported good.

Section 10.3008, which reflects CTPA Article 4.19.2, authorizes the denial of CTPA tariff benefits if the importer fails to comply with any of the requirements under Subpart T, Part 10, CBP regulations.

Export Requirements

Section 10.3009, which implements CTPA Articles 4.20.1 and 4.17.1, sets forth certain obligations of a person who completes and issues a certification for a good exported from the United States to Colombia. Paragraphs (a) and (b) of § 10.3009, reflecting CTPA Article 4.20.1, require a person who completes such a certification to provide a copy of the certification to CBP upon request and to give prompt notification of any errors in the certification to every person to whom the certification was given. Paragraph (c) of § 10.3009 reflects Article 4.17.1, concerning the recordkeeping requirements that apply to a person who completes and issues a certification for a good exported from the United States to Colombia.

Post-Importation Duty Refund Claims

Sections 10.3010 through 10.3012 implement CTPA Article 4.19.5 and section 206 of the Act, which allow an importer who did not claim CTPA tariff benefits on a qualifying good at the time of importation to apply for a refund of any excess duties at any time within one year after the date of importation. Such a claim may be made even if liquidation of the entry would otherwise be considered final under other provisions of law.

Rules of Origin

Sections 10.3013 through 10.3025 provide the implementing regulations regarding the rules of origin provisions of General Note 34, HTSUS, Chapter Four and Article 3.3 of the CTPA, and section 203 of the Act.

Definitions

Section 10.3013 sets forth terms that are defined for purposes of the rules of origin as found in section 203(n) of the Act.

General Rules of Origin

Section 10.3014 sets forth the basic rules of origin established in Article 4.1 of the CTPA, section 203(b) of the Act, and General Note 34, HTSUS. The provisions of § 10.3014 apply both to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under General Note 34, HTSUS.

Section 10.3014(a), reflecting section 203(b)(1) of the Act, specifies those goods that are originating goods because they are wholly obtained or produced entirely in the territory of one or both of the Parties.

Section 10.3014(b), reflecting section 203(b)(2) of the Act, provides that goods that have been produced entirely in the territory of one or both of the Parties from non-originating materials, each of which undergoes an applicable change in tariff classification and satisfies any applicable regional value content or other requirement set forth in General Note 34, HTSUS, are originating goods. Essential to the rules in § 10.3014(b) are the specific rules of General Note 34, HTSUS, which are incorporated by reference.

Section 10.3014(c), reflecting section 203(b)(3) of the Act, provides that goods that have been produced entirely in the territory of one or both of the Parties exclusively from originating materials are originating goods.

Value Content

Section 10.3015 reflects CTPA Article 4.2 and section 203(c) of the Act concerning the basic rules that apply for purposes of determining whether an imported good satisfies a minimum regional value content (“RVC”) requirement. Section 10.3016, reflecting CTPA Articles 4.3, 4.4 and section 203(d) of the Act, sets forth the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the *de minimis* rules.

Accumulation

Section 10.3017, which is derived from CTPA Article 4.5 and section 203(e) of the Act, sets forth the rule by which originating materials from the territory of a Party that are used in the production of a good

in the territory of the other Party will be considered to originate in the territory of that other country. In addition, this section also establishes that a good that is produced by one or more producers in the territory of one or both of the Parties is an originating good if the good satisfies all of the applicable requirements of the rules of origin of the CTPA.

De Minimis

Section 10.3018, as provided for in CTPA Article 4.6 and section 203(f) of the Act, sets forth *de minimis* rules for goods that may be considered to qualify as originating goods even though they fail to qualify as originating goods under the rules specified in § 10.3014. There are a number of exceptions to the *de minimis* rule set forth in CTPA Annex 4.6 (Exceptions to Article 4.6) as well as a separate rule for textile and apparel goods.

Fungible Goods and Materials

Section 10.3019, as provided for in CTPA Article 4.7 and section 203(g) of the Act, sets forth the rules by which “fungible” goods or materials may be claimed as originating.

Accessories, Spare Parts, or Tools

Section 10.3020, as provided for in CTPA Article 4.8 and section 203(h) of the Act, specifies the conditions under which a good’s standard accessories, spare parts, or tools are: (1) Treated as originating goods; and (2) disregarded in determining whether all non-originating materials undergo an applicable change in tariff classification under General Note 34, HTSUS.

Goods Classifiable as Goods Put Up in Sets

Section 10.3021, as provided for in CTPA Articles 3.3.10 and 4.9 and section 203(m) of the Act, provides that, notwithstanding the specific rules of General Note 34, HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not qualify as originating goods unless: (1) Each of the goods in the set is an originating good; or (2) the total value of the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set, or 10 percent of the adjusted value of the set in the case of textile or apparel goods.

Packaging Materials and Packing Materials

Sections 10.3022 and 10.3023, as provided for in CTPA Articles 4.10 and 4.11 and sections 203(i) and (j) of the Act, respectively, provide

that retail packaging materials and packing materials for shipment are to be disregarded with respect to their actual origin in determining whether non-originating materials undergo an applicable change in tariff classification under General Note 34, HTSUS. These sections also set forth the treatment of packaging and packing materials for purposes of the regional value content requirement of the note.

Indirect Materials

Section 10.3024, as provided for in CTPA Article 4.12 and section 203(k) of the Act, provides that indirect materials, as defined in § 10.3013(h), are considered to be originating materials without regard to where they are produced.

Transit and Transshipment

Section 10.3025, as provided for in CTPA Article 4.13 and section 203(l) of the Act, sets forth the rule that an originating good loses its originating status and is treated as a non-originating good if, subsequent to production in the territory of one or both of the Parties that qualifies the good as originating, the good: (1) Undergoes production outside the territories of the Parties, other than certain specified minor operations; or (2) does not remain under the control of customs authorities in the territory of a non-Party.

Origin Verifications and Determinations

Section 10.3026 implements CTPA Article 4.18 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to CTPA preferential tariff treatment. This section also governs the conduct of verifications directed to producers of materials that are used in the production of a good for which CTPA preferential duty treatment is claimed.

Section 10.3027, as provided for in CTPA Article 3.2 and section 208 of the Act, sets forth the verification and enforcement procedures specifically relating to trade in textile and apparel goods.

Section 10.3028 also implements CPTA Articles 3.2 and 4.18, and sections 205, 208 and 209 of the Act and provides the procedures that apply when preferential tariff treatment is denied on the basis of an origin verification conducted under Subpart T of Part 10 of the CBP regulations.

Section 10.3029 implements CTPA Article 4.18.5 and section 205(b) of the Act, concerning the denial of preferential tariff treatment in situations in which there is a pattern of conduct by an importer, exporter, or producer of false or unsupported CTPA preference claims.

Penalties

Section 10.3030 concerns the general application of penalties to CTPA transactions and is based on CTPA Article 5.9 and section 205 of the Act.

Section 10.3031 implements CTPA Article 4.19.3 and section 205(a)(1) of the Act with regard to an exception to the application of penalties in the case of an importer who promptly and voluntarily makes a corrected claim and pays any duties owing.

Section 10.3032 implements CTPA Article 4.20.2 and section 205(a)(2) of the Act, concerning an exception to the application of penalties in the case of a U.S. exporter or producer who promptly and voluntarily provides notification of the making of an incorrect certification with respect to a good exported to Colombia.

Section 10.3033 sets forth the circumstances under which the making of a corrected claim or certification by an importer or the providing of notification of an incorrect certification by a U.S. exporter or producer will be considered to have been done “promptly and voluntarily.” Corrected claims or certifications that fail to meet these requirements are not excepted from penalties, although the U.S. importer, exporter, or producer making the corrected claim or certification may, depending on the circumstances, qualify for a reduced penalty as a prior disclosure under 19 U.S.C. 1592(c)(4). Section 10.3033(c) also specifies the content of the statement that must accompany each corrected claim or certification, including any certifications and records demonstrating that a good is an originating good.

Goods Returned After Repair or Alteration

Section 10.3034 implements CTPA Article 2.6 regarding duty-free treatment for goods re-entered after repair or alteration in Colombia.

Other Amendments

Part 24

An amendment is made to § 24.23(c) (19 CFR 24.23(c)), which concerns the merchandise processing fee, to implement section 204 of the Act providing that the merchandise processing fee is not applicable to goods that qualify as originating goods under the CTPA.

Part 162

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0 (19 CFR 162.0), which prescribes the

scope of that part, to refer readers to the additional CTPA records maintenance and examination provisions contained in Subpart T, Part 10, CBP regulations.

Part 163

A conforming amendment is made to § 163.1 (19 CFR 163.1) to include the maintenance of any documentation, as required by section 207 of the Act, that the importer may have in support of a claim for preference under the CTPA as an activity for which records must be maintained. Also, the list of records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the “(a)(1)(A) list”) is also amended to add the records that the importer may have in support of a CTPA claim for preferential tariff treatment.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. The list contained in § 178.2 (19 CFR 178.2) is amended to add the information collections used by CBP to determine eligibility for preferential tariff treatment under the CTPA and the Act.

Inapplicability of Notice and Delayed Effective Date Requirements

Under the Administrative Procedure Act (“APA”) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures do not apply to an agency rulemaking to the extent that it involves a foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States because they implement preferential tariff treatment and related provisions of the CTPA. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective upon publication. However, CBP is soliciting comments in this interim rule and will consider all comments received before issuing a final rule.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30,

1993 (58 FR 51735, October 4, 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in these regulations are under the review of the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1651–0117, which covers many of the free trade agreement requirements that CBP administers, and 1651–0076, which covers general recordkeeping requirements. The addition of the CTPA requirements will result in an increase in the number of respondents and burden hours for this information collection. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collections of information in these regulations are in §§ 10.3003, 10.3004, and 10.3007. This information is required in connection with general recordkeeping requirements (§§ 10.3007), as well as claims for preferential tariff treatment under the CTPA and the Act and will be used by CBP to determine eligibility for tariff preference under the CTPA and the Act (§§ 10.3003 and 10.3004). The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual burden: 8,000.

Estimated number of respondents: 40,000.

Estimated annual frequency of responses per respondent: 1.

Estimated average annual burden per response: .2 hours.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations

Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229–1179.

Signing Authority

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

List of Subjects

19 CFR Part 10

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

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 162

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

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

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

Amendments to the Regulations

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

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

■ 1. The general authority citation for part 10 continues to read, and the specific authority for new subpart T is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Sections 10.3001 through 10.3034 also issued under 19 U.S.C. 1202 (General Note 34, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112–42, 125 Stat. 462 (19 U.S.C. 3805 note).

■ 2. In § 10.31(f):

■ a. The words “Customs Form” are removed each place that they appear and the words “CBP Form” are added in each place; and

■ b. The sixth sentence is revised.

The revision to § 10.31(f) reads as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, Peru, the Republic of Korea, or Colombia and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Note 12, 25, 26, 27, 29, 30, 31, 32, 33, and 34, HTSUS, in the country of which the importer is a resident.

* * * * *

■ 3a. Part 10, CBP regulations, is amended by adding and reserving subpart S.

■ 3b. Part 10, CBP regulations, is amended by adding subpart T to read as follows:

Subpart T—United States-Colombia Trade Promotion Agreement

General Provisions

Sec.

10.3001 Scope.

10.3002 General definitions.

Import Requirements

10.3003 Filing of claim for preferential tariff treatment upon importation.

10.3004 Certification.

10.3005 Importer obligations.

10.3006 Certification not required.

10.3007 Maintenance of records.

10.3008 Effect of noncompliance; failure to provide documentation regarding transshipment.

Export Requirements

10.3009 Certification for goods exported to Colombia.

Post-Importation Duty Refund Claims

10.3010 Right to make post-importation claim and refund duties.

10.3011 Filing procedures.

10.3012 CBP processing procedures.

Rules of Origin

10.3013 Definitions.

10.3014 Originating goods.

10.3015 Regional value content.

10.3016 Value of materials.

10.3017 Accumulation.

10.3018 De minimis.

10.3019 Fungible goods and materials.

10.3020 Accessories, spare parts, or tools.

10.3021 Goods classifiable as goods put up in sets.

10.3022 Retail packaging materials and containers.

10.3023 Packing materials and containers for shipment.

10.3024 Indirect materials.

10.3025 Transit and transshipment.

Origin Verifications and Determinations

10.3026 Verification and justification of claim for preferential tariff treatment.

- 10.3027 Special rule for verifications in Colombia of U.S. imports of textile and apparel goods.
- 10.3028 Issuance of negative origin determinations.
- 10.3029 Repeated false or unsupported preference claims.

Penalties

- 10.3030 General.
- 10.3031 Corrected claim or certification by importers.
- 10.3032 Corrected certification by exporters or producers.
- 10.3033 Framework for correcting claims or certifications.

Goods Returned After Repair or Alteration

- 10.3034 Goods re-entered after repair or alteration in Colombia.

Subpart T—United States-Colombia Trade Promotion Agreement

General Provisions

§ 10.3001 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Colombia Trade Promotion Agreement (the CTPA) signed on November 22, 2006, and under the United States-Colombia Trade Promotion Agreement Implementation Act (the “Act”), Public Law 112–42, 125 Stat. 462 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the CTPA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.3002 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* “Claim for preferential tariff treatment” means a claim that a good is entitled to the duty rate applicable under the CTPA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin.* “Claim of origin” means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

(c) *Customs authority*. “Customs authority” means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty*. “Customs duty” includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party’s domestic law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Customs Valuation Agreement*. “Customs Valuation Agreement” means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(f) *Days*. “Days” means calendar days;

(g) *Enterprise*. “Enterprise” means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *Enterprise of a Party*. “Enterprise of a Party” means an enterprise constituted or organized under a Party’s law;

(i) *Goods of a Party*. “Goods of a Party” means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party.

(j) *GATT 1994*. “GATT 1994” means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement*;

(k) *Harmonized System*. “Harmonized System” means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading*. “Heading” means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS*. “HTSUS” means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Identical goods*. “Identical goods” means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods;

(o) *Originating*. “Originating” means qualifying for preferential tariff treatment under the rules of origin set out in Article 3.3 (Textiles and Apparel) or Chapter Four (Rules of Origin and Origin Procedures) of the CTPA, and General Note 34, HTSUS;

(p) *Party*. “Party” means the United States or Colombia;

(q) *Person*. “Person” means a natural person or an enterprise;

(r) *Preferential tariff treatment*. “Preferential tariff treatment” means the duty rate applicable under the CTPA to an originating good, and an exemption from the merchandise processing fee;

(s) *Subheading*. “Subheading” means the first six digits in the tariff classification number under the Harmonized System;

(t) *Textile or apparel good*. “Textile or apparel good” means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as “the ATC”), which is part of the WTO Agreement, except for those goods listed in Annex 3–C of the CTPA;

(u) *Territory*. “Territory” means:

(1) With respect to Colombia, in addition to its continental territory, the archipelago of San Andrés, Providencia and Santa Catalina, the islands of Malpelo, and all the other islands, islets, keys, headlands and shoals that belong to it, as well as air space and the maritime areas over which Colombia has sovereignty or sovereign rights or jurisdiction in accordance with its domestic law and international law, including applicable international treaties; and

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(v) *WTO*. “WTO” means the World Trade Organization; and

(w) *WTO Agreement*. “WTO Agreement” means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

Import Requirements

§ 10.3003 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim.* An importer may make a claim for CTPA preferential tariff treatment, including an exemption from the merchandise processing fee, based on either:

(1) A written or electronic certification, as specified in § 10.3004, that is prepared by the importer, exporter, or producer of the good;

(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim.* The claim is made by including on the entry summary, or equivalent documentation, the letters "CO" as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim.* If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.3031 and 10.3033).

§ 10.3004 Certification.

(a) *General.* An importer who makes a claim pursuant to § 10.3003(b) based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of the port director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone number, and email address of the certifying person;

(ii) If not the certifying person, the legal name, address, telephone number, and email address of the importer of record, the exporter, and the producer of the good, if known;

(iii) The legal name, address, telephone number, and email address of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iv) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 34, HTSUS; and

(vi) The applicable rule of origin set forth in General Note 34, HTSUS, under which the good qualifies as an originating good;

(vii) Date of certification;

(viii) In case of a blanket certification issued with respect to multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of certification, the period that the certification covers; and

(4) Must include a statement, in substantially the following form:

“I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Colombia Trade Promotion Agreement; and

This document consists of ____ pages, including all attachments.”

(b) *Responsible official or agent.* The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certification provided for in paragraph (a) of this section must be completed in either the English or Spanish language. In the latter case, the port director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer.* (1) A certification may be prepared by the exporter or producer of the good on the basis of:

(i) The exporter's or producer's knowledge that the good is originating; or

(ii) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(2) The port director may not require an exporter or producer to provide a written or electronic certification to another person.

(e) *Applicability of certification.* The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification.* A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was issued

§ 10.3005 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.3003(b):

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the CTPA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.3004; and

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (see §§ 10.3031 through 10.3033).

§ 10.3006 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.3004 for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. \$2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.3004, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.3007 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good (based on either the importer's certification or its knowledge, or on the certification issued by the exporter or producer) imported into the United States under § 10.3003(b) must maintain, for a minimum of five years after the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the CTPA. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.3008 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.3004 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the CTPA, and the importer of the good does not provide, at the

request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.3025(a) were met.

Export Requirements

§ 10.3009 Certification for goods exported to Colombia.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Colombia must provide a copy of the certification (written or electronic) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to Colombia and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.3032 and 10.3033).

(c) *Maintenance of records* —(1) *General.* Any person who completes and issues a certification for a good exported from the United States to Colombia must maintain, for a period of at least five years after the date the certification was issued, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

- (i) The purchase, cost, and value of, and payment for, the good;
- (ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and
- (iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in Part 163 of this chapter.

Post-Importation Duty Refund Claims

§ 10.3010 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.3011. Subject to the provisions of § 10.3008, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.3012(c).

§ 10.3011 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written or electronic declaration or statement stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a written or electronic certification prepared in accordance with § 10.3004 if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.3012 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim made pursuant to § 10.3011, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally

decided, the port director will suspend action on the claim filed under § 10.3011 until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under § 10.3011 until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry*. If the port director determines that a claim for a refund filed under § 10.3011 should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry*. If the port director determines that a claim for a refund filed under § 10.3011 should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under § 10.3011.

(d) *Denial of claim*—(1) *General*. The port director may deny a claim for a refund filed under § 10.3011 if the claim was not filed timely, if the importer has not complied with the requirements of § 10.3008 and 10.3011, or if, following an origin verification under § 10.3026, the port director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.3026.

(2) *Unliquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

Rules of Origin

§ 10.3013 Definitions.

For purposes of §§ 10.3013 through 10.3025:

(a) *Adjusted value*. “Adjusted value” means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (n) of this section;

(b) *Class of motor vehicles*. “Class of motor vehicles” means any one of the following categories of motor vehicles:

(1) Motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under 8704.10 or 8702.90, HTSUS, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706;

(2) Motor vehicles classified under subheading 8701.10 or subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, HTSUS, and motor vehicles of subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles classified under subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter*. “Exporter” means a person who exports goods from the territory of a Party;

(d) *Fungible good or material*. “Fungible good or material” means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) *Generally Accepted Accounting Principles*. “Generally Accepted Accounting Principles” means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good*. “Good” means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* “Goods wholly obtained or produced entirely in the territory of one or both of the Parties” means:

(1) Plants and plant products harvested or gathered in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or both of the Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) Vessels registered or recorded with Colombia and flying its flag;
or

(ii) Vessels documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in paragraph (g)(6) of this section, if such factory ships are:

(i) Registered or recorded with Colombia and fly its flag; or

(ii) Documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in any of paragraphs (g)(1) through (g)(10) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Indirect Material.* “Indirect material” means a good used in the production, testing, or inspection of another good in the territory of

one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other good that is not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production.

(i) *Material*. “Material” means a good that is used in the production of another good, including a part or an ingredient;

(j) *Model line*. “Model line” means a group of motor vehicles having the same platform or model name;

(k) *Net cost*. “Net cost” means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(l) *Non-allowable interest costs*. “Non-allowable interest costs” means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the Party in which the producer is located;

(m) *Non-originating good or non-originating material*. “Non-originating good” or “non-originating material” means a good or material, as the case may be, that does not qualify as originating under General Note 34, HTSUS, or this subpart;

(n) *Packing materials and containers for shipment*. “Packing materials and containers for shipment” means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(o) *Producer*. “Producer” means a person who engages in the production of a good in the territory of a Party;

(p) *Production*. “Production” means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(q) *Reasonably allocate*. “Reasonably allocate” means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(r) *Recovered goods*. “Recovered goods” means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(s) *Remanufactured good*. “Remanufactured good” means an industrial good assembled in the territory of one or both of the Parties that is classified in Chapter 84, 85, 87, or 90 or heading 9402, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods as defined in paragraph (r) of this section; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to such new goods;

(t) *Royalties*. “Royalties” means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(u) *Sales promotion, marketing, and after-sales service costs*. “Sales promotion, marketing, and after-sales service costs” means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and pro-

tection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(v) *Self-produced material*. "Self-produced material" means an originating material that is produced by a producer of a good and used in the production of that good;

(w) *Shipping and packing costs*. "Shipping and packing costs" means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(x) *Total cost*. "Total cost" means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs,

and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(y) *Used*. “Used” means utilized or consumed in the production of goods; and

(z) *Value*. “Value” means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.3014 Originating goods.

Except as otherwise provided in this subpart and General Note 34, HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the CTPA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 34, HTSUS, and the good satisfies all other applicable requirements of General Note 34, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 34, HTSUS, and satisfies all other applicable requirements of General Note 34, HTSUS;

(c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials.

§ 10.3015 Regional value content.

(a) *General*. Except for goods to which paragraph (d) of this section applies, where General Note 34, HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method*. Under the build-down method, the regional value content must be calculated on the basis of the formula $RVC = ((AV - VNM) / AV) \times 100$, where RVC is the regional value content,

expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula $RVC = (VOM/AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General.* Where General Note 34, HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), or headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good shall be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula $RVC = ((NC - VNM)/NC) \times 100$, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General*. For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories*. The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General*. For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: the fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or

month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (d)(4)(i)(B) of this section for automotive goods that are exported to the territory of Colombia or the United States.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.3016 Value of materials.

(a) *Calculating the value of materials.* Except as provided in § 10.3024, for purposes of calculating the regional value content of a good under General Note 34, HTSUS, and for purposes of applying the *de minimis* (see § 10.3018) provisions of General Note 34, HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material, i.e., in the same manner as for imported goods, with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Colombia purchases material x from an unrelated seller in Colombia for \$100. Under the provisions of Article

1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Colombia (\$100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Colombia by the seller (or by anyone else). So long as the producer acquired material x in Colombia, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Colombia at or about the same time the goods were sold to the producer in Colombia. Thus, if the seller of material x also sold an identical material to another buyer in Colombia without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight (“cost of freight” includes the costs of all types of freight, including in-land freight incurred within a Party’s territory, regardless of the mode of transportation), insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight (“cost of freight” includes the costs of all types of freight, including in-land freight incurred within a Party’s territory, regardless of the mode of transportation), insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 34, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.3017 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.3014 and all other applicable requirements of General Note 34, HTSUS.

§ 10.3018 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 34, HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 34, HTSUS; and

(3) The good meets all other applicable requirements of General Note 34, HTSUS.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, which is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; or

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS;

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in headings 1501 through 1508, HTSUS, or headings 1511 through 1515, HTSUS;

(6) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(7) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; or

(8) Except as provided in paragraphs (b)(1) through (b)(7) of this section and General Note 34, HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General*. Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 34, HTSUS, will nevertheless be considered to be an originating good if:

(i) The total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.19.30, 5402.19.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns*. A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, “wholly formed” means that all the production processes and finishing operations, starting with the extrusion of all filaments, strips, films, or sheets, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of a Party.

(3) *Yarn, fabric, or fiber*. For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term “component of the good that determines the tariff classification of the good” means all of the fibers in the good.

§ 10.3019 Fungible goods and materials.

(a) *General*. A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory man-

agement method with respect to the fungible good or material. For purposes of this section, the term “inventory management method” means:

- (1) Averaging;
- (2) “Last-in, first-out;”
- (3) “First-in, first-out;” or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.3020 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good’s standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 34, HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they are specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.3015.

§ 10.3021 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 34, HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set;

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§ 10.3022 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the CTPA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 34, HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Colombian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.3016(a)(1), the value of the blister packages is their adjusted value, which in this case is \$10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, $RVC = ((AV - VNM) / AV) \times 100$ (see § 10.3015(b)), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their \$10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, $RVC = (VOM / AV) \times 100$ (see § 10.3015(c)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.3023 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.3013(n), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 34, HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in § 10.3013(n), are to be

disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Colombian producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Colombia. The shipping container is originating. The value of the shipping container determined under section § 10.3016(a)(2) is \$3. Good C is subject to a regional value content requirement. The transaction value of good C is \$100, which includes the \$3 shipping container. The U.S. importer decides to use the build-up method, $RVC=(VOM/AV) \times 100$ (see § 10.3015(c)), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a \$3 deduction for the value of the shipping container. Therefore, the AV is \$97 (\$100-\$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.3024 Indirect materials.

An indirect material, as defined in § 10.3013(h), will be considered to be an originating material without regard to where it is produced.

Example. Colombian Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.3014(b)(1) and General Note 34, each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.3025 Transit and transshipment.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under § 10.3014 will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

Origin Verifications and Determinations

§ 10.3026 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 10.3003(b) or § 10.3011, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the port director finds a pattern of conduct, indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under CTPA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Colombia, to review the records of the type referred to in § 10.3009(c)(1) or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may

be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.3027 Special rule for verifications in Colombia of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the Government of Colombia conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that a person has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines that the person has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the person has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine, or that the person has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States—* (1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of Colombia conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification if CBP determines that the person has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines that the person has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information, or that the person has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine, or that the person has provided incorrect information as to, the country of origin of any such good.

(c) *Denial of permission to conduct a verification.* If a person does not consent to a verification under this section, CBP may deny pref-

erential tariff treatment to the type of goods of the person that would have been the subject of the verification.

(d) *Assistance by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Colombia, along with the competent authorities of Colombia, to the premises of an exporter, producer, or any other person involved in the movement of textile or apparel goods from Colombia to the United States.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

§ 10.3028 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 34, HTSUS, and in §§ 10.3013 through 10.3025, the legal basis for the determination.

§ 10.3029 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the CTPA rules of origin set forth in General Note 34, HTSUS, CBP may suspend preferential tariff treatment under the CTPA to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 34, HTSUS.

Penalties

§ 10.3030 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related

laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the CTPA.

§ 10.3031 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.3003(c) will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.3032 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.3009(b) with respect to the making of an incorrect certification.

§ 10.3033 Framework for correcting claims or certifications.

(a) *“Promptly and voluntarily” defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term “fraud” will have the meaning set forth in paragraph (C)(3) of Appendix B to Part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

Goods Returned After Repair or Alteration

§ 10.3034 Goods re-entered after repair or alteration in Colombia.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Colombia as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Colombia, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, "repairs or alterations" means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other

treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Colombia, are incomplete for their intended use and for which the processing operation performed in Colombia constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of § 10.8, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Colombia after having been exported for repairs or alterations and which are claimed to be duty free.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 4. The general authority citation for Part 24 and specific authority for § 24.23 continue to read as follows:

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

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

■ 5. Section 24.23 is amended by adding paragraph (c)(13) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(13) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act (*see also* General Note 34, HTSUS that are entered, or withdrawn from warehouse for consumption, on or after May 15, 2012.

* * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 6. The authority citation for Part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

■ 7. Section 162.0 is amended by revising the last sentence to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the Dominican Republic-Central America-U.S. Free Trade Agreement, the U.S.-Morocco Free Trade Agreement, the U.S.-Peru Trade Promotion Agreement, the U.S.-Korea Free Trade Agreement, and the U.S-Colombia Trade Promotion Agreement are contained in Part 10, Subparts H, I, J, M, Q, R, and T of this chapter, respectively.

PART 163—RECORDKEEPING

■ 8. The authority citation for Part 163 continues to read as follows:

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

■ 9. Section 163.1 is amended by redesignating paragraph (a)(2)(xv) as (a)(2)(xvi) and adding a new paragraph (a)(2)(xv) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(xv) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Colombia Trade Promotion Agreement (CTPA), including a CTPA importer’s certification.

* * * * *

■ 10. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

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

* * * * *

IV. * * *

§ 10.3005 CTPA records that the importer may have in support of a CTPA claim for preferential tariff treatment, including an importer’s certification.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 11. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

■ 12. Section 178.2 is amended by adding new listings for “§§ 10.3003 and 10.3004” to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
* * * * *		
§§ 10.3003 and 10.3004. ...	Claim for preferential tariff treatment under the US-Colombia Trade Promotion Agreement.	1651-0117
* * * * *		

Dated: September 20, 2012.

DAVID V. AGUILAR,
Deputy Commissioner,
U.S. Customs and Border Protection.

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

8 CFR Part 100**19 CFR Part 101****[Docket No. USCBP-2012-0037]****CLOSING OF THE JAMIESON LINE, NY BORDER
CROSSING****AGENCY:** U.S. Customs and Border Protection; DHS.**ACTION:** Notice of proposed rulemaking.**SUMMARY:** U.S. Customs and Border Protection (CBP) is proposing to close the Jamieson Line, New York border crossing. The proposed change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.**DATES:** Comments must be received on or before November 23, 2012.**ADDRESSES:** You may submit comments, identified by docket number USCBP- 2012-0037, by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229-1179.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP-2012-0037. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of the document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the 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 Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Kaplan, Director, Office of Field Operations, Programs and Policy, (202) 325-4543 (not a toll-free number) or by email at *Roger.Kaplan@dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Participation

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

II. Background

CBP ports of entry are locations where CBP officers and employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of customs, immigration, agriculture and related U.S. laws at the border. The term “port of entry” is used in the Code of Federal Regulations (CFR) in title 8 for immigration purposes and in title 19 for customs purposes.¹ A “Customs station” is any place, other than a port of entry, at which CBP officers or employees are stationed to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the customs and navigation laws of the United States. Jamieson Line, New York (referred to in § 101.4(c) of title 19 (19 CFR 101.4(c)) as “Jamieson’s Line”) is designated as a Customs station with Trout River, New York as its supervisory port of entry.

For immigration purposes, CBP regulations list ports of entry for aliens arriving by vessel and land transportation in § 100.4(a) of title 8 (8 CFR 100.4(a)). These ports are listed according to location by districts and are designated as Class A, B, or C. Jamieson Line, New York (referred to in 8 CFR 100.4(a) as “Jamison’s Line”) is included in this list, in District No. 7, as a Class B port of entry. For ease of

¹ For customs purposes, CBP regulations list designated CBP ports of entry in § 101.3(b)(1) of title 19 (19 CFR 101.3(b)(1)).

reference, in this document, we will refer to the crossing at Jamieson Line, New York as a border crossing.

On August 23, 2010, the Canada Border Services Agency (CBSA) notified CBP of its intent to close the Jamieson's Line port of entry in Quebec, Canada. The corresponding U.S. border crossing is the Jamieson Line crossing in New York located approximately 150 feet to the south. CBSA closed the Jamieson's Line port in Quebec, Canada on April 1, 2011. This decision created a situation where travelers from Canada may continue to enter the United States at the Jamieson Line border crossing in New York but travelers leaving the United States for Canada must do so at a port other than at Jamieson's Line port in Quebec.

The Jamieson Line border crossing in New York is one of CBP's least trafficked border crossings. The crossing has processed an average of less than six privately owned vehicles per day and had the eighth lowest traffic volume of all CBP land border crossings in 2010. The volume of traffic at the border crossing has dropped by 20.8% from 2008 to 2011. The facility currently has five full time staff, with only two CBP officers assigned per shift. Redirecting the nominal traffic volume to alternative crossings will have minimal impact on the town closest to the crossing, the town of Burke, with a population of 1,359.

The facility was built in 1945 and has not undergone renovation since 1962. The facility has one primary lane, no secondary lane, and commercial vehicle inspections must occur in the roadway. We have determined that the facility does not have the infrastructure to meet modern operational, safety, and technological demands for border crossings and that major renovations would be required if the Jamieson Line border crossing were to continue operations. The costs of such renovations are discussed in Section IV of this document.

The two ports of entry closest to Jamieson Line are the ports of Trout River, New York and Chateaugay, New York. Trout River is located about 9 road miles west of Jamieson Line and Chateaugay, about 6 road miles east of Jamieson Line. If the border crossing at Jamieson Line is closed, the traffic normally seen at that crossing will be processed at these two ports.

In view of the closure of the adjacent Canadian port of Jamieson's Line, the limited usage of the border crossing of Jamieson Line, New York, the location of the alternative ports, and the analysis of the net benefit of the border crossing closure discussed in Section IV of this document (including the cost of necessary renovations were the crossing to remain open), CBP is proposing to close the Jamieson Line,

New York border crossing. This action would further CBP's ongoing goal of more efficiently utilizing its personnel, facilities, and resources.

III. Congressional Notification

On May 31, 2011, the Commissioner of CBP notified Congress of CBP's intention to close the border crossing at Jamieson Line, fulfilling the congressional notification requirements of 19 U.S.C. 2075(g)(2) and section 417 of the Homeland Security Act (6 U.S.C. 217).

IV. Regulatory Requirements

A. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a). Accordingly, this notice of proposed rulemaking is signed by the Secretary of Homeland Security.

B. Executive Order 12866: Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

1. Baseline Conditions

The Jamieson Line crossing averaged 2,202 cars and 63 trucks a year from 2008 through 2011. CBP assigns five full time staff to the crossing, costing about \$559,000 per year, including benefits. In addition, CBP spends about \$28,000 a year on operating expenses such as utilities and maintenance. The total annual cost of operating the crossing is about \$587,000. DHS has determined that the Jamieson Line crossing requires significant renovation and expansion, requiring an estimated \$6.5 million to build facilities that meet all current safety and security standards. Since this construction is the only alternative to closing the crossing, CBP would need to spend \$7,087,000 the first year (construction plus operating costs) and \$587,000 each subsequent year if the crossing were to remain open.

Option 1: Keep crossing open	First year	Subsequent years
Staffing Expenses	\$559,000	\$559,000
Operating Expenses	28,000	28,000
Crossing Facility Renovation Costs	6,500,000	.....
Total Cost to Keep Crossing Open	7,087,000	587,000

2. Costs of Closing the Crossing

The costs of the proposed closure fall into three categories—the cost to CBP to physically close the crossing, the cost to U.S. travelers to drive to the next nearest crossing, and the cost to the economy of lost revenue resulting from potential decreased Canadian travel. CBP estimates that it will cost approximately \$205,000 to physically close the crossing, which involves building road barricades, stabilizing the building, and fencing.

In addition to the cost to the government of closing the crossing, we must examine the impact of this proposed closure on U.S. travelers (per guidance provided in OMB Circular A–4, this analysis is focused on costs and benefits to U.S. entities). Approximately 2,250 vehicles and 3,200 passengers cross from Canada into the United States each year at Jamieson Line. If the crossing is closed, these travelers would need to travel to an alternate port, which could cost them both time and money.

As noted, the two ports closest to Jamieson Line are Chateaugay, which is about 6 miles east, and Trout River, which is about 9 miles west. The alternate port travelers choose to use will depend on their point of origin and their destination. In general, the closer the point of origin or destination is to Jamieson Line, the more the traveler will be affected by the closure. Because CBP does not collect data on either of these points, for the purposes of this analysis we will assume the worst case scenario—that all crossers begin their trip on the Canadian side of the border at a point just across from Jamieson Line and have to travel through an alternate port of entry to arrive at their ultimate destination at a point adjacent to Jamieson Line on the U.S. side of the border. We estimate that such a detour would add 40 minutes and 20 miles to the crossers' trips each way. Since it is unlikely that all crossings at Jamieson Line originate and end immediately at the border, this methodology likely overstates the cost to travelers.

In 2007, Industrial Economics, Inc. (IEc) conducted a study for CBP to develop “an approach for estimating the monetary value of changes in time use for application in [CBP’s] analyses of the benefits and

costs of major regulations”.² We follow the three-step approach detailed in IEC’s 2007 analysis to monetize the increase in travel time resulting from the closure of Jamieson Line: (1) Determine the local wage rate, (2) determine the purpose of the trip, and (3) determine the value of the travel delay as a result of this rule. We start by using the median hourly wage rate for Northern New York of \$14.88 per hour, as the effects of the rule are local.³ We next determine the purpose of the trip. For the purposes of this analysis, we assume this travel will be personal travel and will be local travel. We identify the value of time multiplier recommended by the U.S. Department of Transportation (DOT) for personal, local travel, as 0.5.⁴ Finally, we account for the value of the travel delay. Since the added time spent traveling is considered more inconvenient than the baseline travel, we account for this using a factor that weighs time inconvenienced more heavily than baseline travel time. This factor, 1.47, is multiplied by the average wage rate and the DOT value of time multiplier for personal, local travel for a travel time value of \$10.94 per traveler ($\$14.88 \times 0.5 \times 1.47$).⁵

We next multiply the estimated number of travelers entering the U.S. through Jamieson Line in a year (3,200) by the average delay (40 minutes) to arrive at the number of additional hours travelers would be delayed as a result of this rule—2,133 hours. We multiply this by the value of wait time (\$10.94) to arrive at the value of the additional driving time for travelers arriving in the United States once Jamieson Line is closed. Finally, we double this to account for round trip costs to reach a total time cost of \$46,670.

Besides the cost of additional travel time, we must consider the vehicle costs of a longer trip. We must first estimate the number of miles the closure of Jamieson Line would add to travelers’ trips. The annual traffic arriving at Jamieson Line is 2,250 vehicles. Since we assume that the closure will add 20 miles to each crossing, the closure

² Robinson, Lisa A. 2007. “Value of Time.” Submitted to US Customs and Border Protection on February 15, 2007. The paper is contained in its entirety as Appendix D in the Regulatory Assessment for the April 2008 final rule for the Western Hemisphere Travel Initiative requirements in the land environment (73 FR 18384; April 3, 2008). See www.regulation.gov document numbers USCBP-2007-0061-0615 and USCBP-2007-0061-0616.

³ Bureau of Labor Statistics, May 2010. Occupational Employment Statistics Query System. Capital/Northern New York nonmetropolitan area. <http://data.bls.gov/oes/datatype.do>.

⁴ U.S. Department of Transportation (DOT), *The Value of Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2*, (Memorandum from Polly Trottenberg), September 28, 2011, Tables 1. http://ostpxweb.dot.gov/policy/reports/vot_guidance_092811c.pdf.

⁵ Wardman, M., “A Review of British Evidence on Time and Service Quality Valuations,” *Transportation Research Part E*, Vol. 37, 2001, pp. 107–128.

will add a total of 45,000 miles to travelers' trips each year. We next monetize the delay by applying the IRS's standard mileage rate for business travel of \$0.555⁶ to these vehicles, which includes fuel costs, wear-and-tear, and depreciation of the vehicle. Because this is an estimate for business travel, it may slightly overstate costs for leisure travelers using their vehicles on leisure activities. Finally, we double the costs to account for the return trip. We estimate that a closure of Jamieson Line will cost U.S. citizens of \$50,000 in additional vehicular costs.

The final cost we must consider is the cost to the economy of lost revenue resulting from potential decreased Canadian travel. Because of the lack of data on the nature of travel through Jamieson Line and its effect on the local economy, we are unable to monetize or quantify these costs. We therefore discuss this qualitatively.

Since both U.S. and foreign travelers will be inconvenienced by the closure of the crossing of Jamieson Line, it is possible that fewer foreign travelers will choose to cross the border into the United States. To the extent that these visitors were spending money in the United States, local businesses would lose revenue. Since fewer than seven vehicles a day entered the United States at Jamieson Line, this effect is likely to be very small. Also, it could be mitigated by those U.S. citizens who would now choose to remain in the United States. We believe that the total impacts on the economy due to decreased travel to the United States are negligible.

In summary, the closure of the crossing of Jamieson would cost CBP \$205,000 in direct closure costs in the first year, and U.S. travelers \$46,670 in time costs and \$50,000 in vehicle costs annually. Total quantifiable costs to close the crossing are thus approximately \$302,000 in the first year and \$97,000 each following year.

Option 2: Close crossing	First year	Subsequent years
U.S. Traveler Time Costs	\$46,670	\$46,670
U.S. Traveler Vehicle Costs	50,000	50,000
Crossing Facility Closure Cost	205,000	.....
Total Cost to Close Crossing	301,670	96,670

3. Net Effect of Closure

The costs to CBP of leaving the crossing of Jamieson Line open are \$7,087,000 the first year and \$587,000 each following year. The cost of closing the crossing are \$301,670 the first year and \$96,670 each

⁶ Internal Revenue Service, July 1, 2011. IRS Standard Mileage Rates. <http://www.irs.gov/taxpros/article/0,,id=156624,00.html>.

following year. Thus, the net benefit of the crossing closure is \$6,785,330 the first year and \$490,330 each year after that.

C. Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. 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). Individuals are not defined as small entities under the Regulatory Flexibility Act.

Because CBP does not collect data on the number of small businesses that use the crossing of Jamieson Line, we cannot estimate how many would be affected by this rule. However, an average of fewer than seven vehicles cross into the United States at Jamieson Line each day, and the total cost of the rule to U.S. travelers is only about \$97,000 a year, even assuming the longest possible detour for all traffic. DHS does not believe that this cost rises to the level of a significant economic impact. DHS thus believes that this rule will not have a significant economic impact on a substantial number of small entities. DHS welcomes any comments regarding this assessment. If it does not receive any comments contradicting this finding, DHS will certify that this rule will not have a significant economic impact on a substantial number of small entities at the final rule stage.

D. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

V. Authority

This change is proposed under the authority of 5 U.S.C. 301, 6 U.S.C. 112, 203 and 211, 8 U.S.C. 1103 and 19 U.S.C. 2, 66 and 1624.

VI. Proposed Amendment to Regulations

If the proposed closure of the border crossing of Jamieson Line, New York is adopted, CBP will amend the lists of CBP Customs stations at 19 CFR 101.4(c) and the CBP ports of entry at 8 CFR 100.4(a) to reflect this change.

Dated: September 19, 2012.

JANET NAPOLITANO,
Secretary.

[Published in the Federal Register, September 24, 2012 (77 FR 58782)]



QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning October 1, 2012, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2012–23, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2012, and ending on December 31, 2012. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus one percentage point (1%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). These interest rates are subject to change for the calendar quarter beginning January 1, 2013, and ending March 31, 2013.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
070174	063075	6	6	.....
070175	013176	9	9	.....
020176	013178	7	7	.....
020178	013180	6	6	.....
020180	013182	12	12	.....

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1-1-99) (percent)
020182	123182	20	20	.....
010183	063083	16	16	.....
070183	123184	11	11	.....
010185	063085	13	13	.....
070185	123185	11	11	.....
010186	063086	10	10	.....
070186	123186	9	9	.....
010187	093087	9	8	.....
100187	123187	10	9	.....
010188	033188	11	10	.....
040188	093088	10	9	.....
100188	033189	11	10	.....
040189	093089	12	11	.....
100189	033191	11	10	.....
040191	123191	10	9	.....
010192	033192	9	8	.....
040192	093092	8	7	.....
100192	063094	7	6	.....
070194	093094	8	7	.....
100194	033195	9	8	.....
040195	063095	10	9	.....
070195	033196	9	8	.....
040196	063096	8	7	.....
070196	033198	9	8	.....
040198	123198	8	7	.....
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1-1-99) (percent)
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	123112	3	3	2

Dated: September 21, 2012.

DAVID V. AGUILAR,
Deputy Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, September 27, 2012 (77 FR 59411)]

GENERAL NOTICE

19 CFR PART 177

NOTICE OF REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AN LED TASK LIGHT KIT

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

ACTION: Notice of revocation of ruling letter and revocation of treatment concerning the tariff classification of an LED task light kit.

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 revoking a ruling letter relating to the tariff classification of an LED task light kit under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the

proposed revocation was published on July 5, 2012, in the Customs Bulletin, Vol. 46, No. 28. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 10, 2012.

FOR FURTHER INFORMATION CONTACT: Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325-0092.

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 that emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 46, No. 28, on July 5, 2012, proposing to revoke New York Ruling Letter (NY) N077436, dated October 9, 2009, pertaining to the tariff classification of an LED task light kit. No comments were received in response to the notice. As stated in the proposed notice, this action will cover any ruling 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 rulings identified above. No further rulings have been found. Any party who has received an

interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this action.

In NY N077436, CBP classified an LED task light kit in subheading 8513.10.20, HTSUS, which provides for flashlights. It is now CBP's position that the LED task light kit is properly classified in subheading 8513.10.40, HTSUS, which provides for other portable electric lamps.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N077436 and any other ruling not specifically identified, in order to reflect the proper analysis contained in Headquarters Ruling (HQ) H081436 (Attachment). 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 action will become effective 60 days after publication in the Customs Bulletin.

Dated: August 15, 2012

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

ATTACHMENT

HQ H081686

August 15, 2012

CLA-2 OT:RR:CTF:TCM H081686 DSR

CATEGORY: Classification

TARIFF NO.: 8513.10.20

MARIAN E. LADNER
LADNER & ASSOCIATES PC
THE KIRBY MANSION
2000 SMITH STREET
HOUSTON, TX 77002

RE: Revocation of NY N077436, dated October 9, 2009; classification of LED task light kit

DEAR MRS. LADNER:

This is in response to your letter, dated October 22, 2009, requesting reconsideration of New York Ruling Letter (NY) N077436, dated October 9, 2009. NY N077436 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of an LED task light kit referred to as the “Nightstick Task Light” (Model NSR-2492) (hereinafter “Nightstick”) and imported by the requester Bayco Products (“Bayco”). CBP classified the article in subheading 8513.10.20, HTSUS, which provides for “Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos) ...: Lamps: Flashlights.” You assert that the Nightstick is instead classifiable under subheading 8513.10.40, HTSUS, as “Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos) ...: Lamps: Other.”

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 46, No. 28, on July 5, 2012, proposing to revoke NY N077436. No comments were received in response to the notice.

FACTS:

The Nightstick is a cylindrical battery-powered hand-held work light that measures approximately 11 ½ inches high by 2 inches in diameter at its widest points. It is made of plastic, features sculpted finger grooves for a positive grip, and is powered by an internal Ni-MH (nickel-metal hydride) battery. At one end of the Nightstick are an LED (light emitting diode) bulb and a reflector under a clear lens. Along one side of the upper part of the Nightstick’s housing are 60 LED bulbs arranged in a 4 by 15 grid under a clear lens. On the other side of the housing is a push button switch that cycles the light between flashlight on/off, LED grid on/off, and a dual use function, where the flashlight and LED grid are powered on simultaneously. The Nightstick is imported together with two removable plastic cuffs designed to snap onto the body of the light. One cuff provides a magnet for mounting the light on any flat, ferrous surface; the other is a swiveling combination hook/stand. There is also a connection for a battery charger adapter. The Nightstick is packaged for retail sale in a plastic clamshell case with the plastic cuffs, an AC wall adapter, a DC 12-V car charger adapter, and an instruction booklet. Images of the device appear below.

kit as it is sold at retail. The kit contains the Nightstick, two removable plastic cuffs designed to snap onto the body of the light, an AC wall adapter, a DC 12-V car charger adapter, and an instruction booklet. A plastic clam-shell case holds all of the above items. All of the items are classifiable in different headings, are “put up together” to enable a user to carry, charge and understand how to operate the Nightstick, and are offered for sale directly to users without repacking. GRI 3(b) states that “[g]oods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character.” See EN(X) to GRI 3(b) (goods put up for retail sale mean goods which consist of at least two different articles which are, *prima facie*, classifiable in different headings; consist of products or articles put up together to meet a particular need or carry out a specific activity; and are put up in a manner suitable for sale directly to users without repacking). The item that imparts the essential character of this set is the Nightstick, as it is the dominant component, both by use and cost in relation to the other constituent components of the set. It is also the reason why a consumer would purchase the set. As such, the set is classified as if consisting only of the Nightstick.

Note 3 to Section XVI, HTSUS, reads in pertinent part as follows:

3. Unless the context otherwise requires . . . other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

Note 5 to Section XVI, HTSUS, defines a “machine” as “any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85.” The ENs to Section XVI state, in pertinent part:

(VI) MULTI-FUNCTION MACHINES AND COMPOSITE MACHINES

(Section Note 3)

In general, multi-function machines are classified according to the principal function of the machine.

Multi-function machines are, for example, machine-tools for working metal using interchangeable tools, which enable them to carry out different machining operations (e.g., milling, boring, lapping).

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3 (c) . . .

There is no dispute that the Nightstick is classifiable at GRI 1, in heading 8513, HTSUS, as a portable electric lamp designed to function by its own source of energy. It is also clear that the good is described by subheading 8513.10, HTSUS, as a “lamp.” The issue arises at the 8-digit level. Therefore, we begin the analysis using GRI 6. The issue is whether, at GRI 6, the article is a flashlight or an “other” portable electric lamp.

Note 3 to Section XVI, HTSUS, provides that, unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be

classified as if consisting only of that component or as being that machine which performs the principal function. In a number of rulings, CBP has applied the definition of the term “flashlight” set forth in *Sanyo Electric Inc. v. United States*, 496 F.Supp. 1311, 1315, 84 Cust. Ct. 167 (1980), which determined that a flashlight is a small, battery-operated, portable electric light. CBP has also added to that definition by ruling that a flashlight is normally held in the hand by the housing, and that a flashlight’s primary function is to project a beam of light. See, e.g., HQ 967480, dated June 2, 2005; HQ 964495, dated February 12, 2001; HQ 952559, dated March 3, 1993; HQ 951855, dated July 24, 1992; and HQ 084852, dated March 28, 1990. Since the device in question projects a beam of light, is battery-operated, and is capable of being held in the hand by its housing, it meets the definition of a flashlight.

In addition to being held by hand and operating as a conventional flashlight, the Nightstick is also capable of (1) being placed on any flat, ferrous surface and mounted with its included magnet; (2) being hung from any stable protrusion that can fit within its hook attachment; or (3) being stood on its side by using its stand attachment. When in any of the above positions, the Nightstick’s LED bank (on the Nightstick’s side) and its LED bulb (on one end of the Nightstick) can operate alone or simultaneously. The LED bank casts a wide area light (referred to as a “floodlight” in Protestant’s submission), while the LED bulb casts a focused beam. CBP has previously ruled that when a portable, battery-operated lamp is primarily utilized for hands-free work, rather than carried in the hand, classification under subheading 8513.10.20, HTSUS, is precluded. See NY F81663, dated January 26, 2000.

Here, the Nightstick can function both as a flashlight and as an area light. Therefore, it is a multi-function machine, and the remaining issue is whether the device’s principal function is that of a flashlight or an “other” type of portable, battery-operated lamp, pursuant to Note 3 to Section XVI.

CBP has found the analysis developed and utilized by the courts in relation to “principal use” (the “Carborundum factors”) to be a useful aid in determining the principal function of an article. Generally, the courts have provided several factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: (1) general physical characteristics; (2) expectation of the ultimate purchaser; (3) channels of trade, environment of sale (accompanying accessories, manner of advertisement and display); (4) use in the same manner as merchandise that defines the class; (5) economic practicality of so using the import; and (6) recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377 (1976), cert. denied, 429 U.S. 979 (1976); *Lennox Collections v. United States*, 20 Ct. Int’l Trade 194, 196 (1996); *Kraft, Inc. v. United States*, 16 Ct. Int’l Trade 483, 489 (1992); and *G. Heileman Brewing Co. v. United States*, 14 Ct. Int’l Trade 614, 620 (1990). See also Headquarters Ruling Letter (“HQ”) W968223, dated January 12, 2007, and HQ 966270, dated June 3, 2003.

The Nightstick is compact and cylindrical, with sculpted finger grooves for a positive grip. It is battery-operated, but may also be powered via the AC adapter attachment. Whether held in the hand, placed upon a stable surface, or hung from something, it is able to cast light from one of its ends via a LED

bulb (and surrounding reflector under a clear lens), and is also able to cast light (a flood light) via a bank of LEDs on its housing.

You assert that the lumens produced by the floodlight function (120 lm) compared to that produced by the flashlight function (65 lm) compels a finding that the principal function of the product will be as a floodlight. You also state that the LED bank has more utility than the flashlight because it provides a “flood of light,” which allows its user to work hands-free and it is not marketed or displayed as a typical “consumer flashlight.”¹

We find the measurement of lumens to be an inconclusive factor when comparing the utility of the two functions. A lumen is a measure of the power of light perceived by the human eye and dictates how much light is cast upon a surface. Floodlights typically need to produce a much wider beam of light than a flashlight; therefore, it follows that the lumens produced by a floodlight will be greater than that of a flashlight in order for the floodlight to cover that larger area. With regard to the marketing and display of the product, the product is advertised as a “Flashlight · Floodlight · Dual-light” for “PORTABLE LIGHTING ANYTIME · ANYWHERE.” Its marketing literature does not conclusively tout one function over the other.

Furthermore, a consumer can choose to use the flashlight function alone (as evidenced by your submission showing the flashlight function employed so), or the floodlight alone, or both functions simultaneously. This is true whether the device is held in the hand, placed upon a floor or other stable, horizontal surface using the stand attachment, or hung using the hook attachment. The attachments allow for hands-free use of the light, but are not required for the light to function, are designed to be easily removable and, when attached, do not interfere with the user’s grip on the housing or the flashlight function.

You have not addressed the economic practicality of using the task light as a flashlight or a flood light. However, we note the subject task light can be purchased through the major online retailer Amazon.com for approximately \$41. However, prices of comparable flashlights and floodlights on that site vary wildly above and below that price, apparently based upon power, brand, casings, LED and reflector technology, etc. We note the same with regard to “floodlights.” Therefore, we are unable to make a useful comparison of the different flashlights and floodlights and reach a conclusion with regard to the economic practicality of using the task light as a flashlight or floodlight.

Considering the above, we conclude that while the Nightstick exhibits the general physical characteristics of a flashlight, it is also marketed, sold and can be used in a manner that is inconsistent with flashlights. While the device in question, in both its flashlight and flood light modes, projects a beam of light (albeit a wider beam when using the “floodlight” function), is battery-operated and is capable of being held in the hand by its housing, it also functions as something beyond that of a flashlight due to the capabilities imparted by the magnetic mount, combination hook/stand and LED bank. Therefore, we cannot determine its principal function.

In accordance with GRI 3(c), when goods cannot be classified by reference to GRI 3(a) or 3(b), they are to be classified in the heading that occurs last in numerical order among those that equally merit consideration in determin-

¹ You reference an “informal survey” that purportedly indicates that users of the product purchased the product for its floodlight capabilities but have submitted no evidence of said survey.

ing their classification. Therefore, classification of the Nightstick will be as subheading 8513.10.40, HTSUS, which provides for other portable, battery-operated electric lamps.

HOLDING:

By application of GRIs 1 (Note 3/XVI), 3(b), 3(c) and 6, the subject Nightstick Task Light” (with accessories) is classified in 8513 HTSUS and specifically in subheading 8513.10.40, HTSUS as “Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: Lamps: Other.” The column one general rate of duty is 3.5% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY N077436, dated July 2, 2008, 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

PROPOSED REVOCATION OF RULING LETTERS

**AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
INSULATED COOLER BAGS**

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

ACTION: Notice of proposed revocation of three ruling letters and proposed revocation of treatment relating to tariff classification of insulated cooler bags.

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) proposes to revoke New York Ruling Letters (NY) N024831, N024015, and N024016, relating to the tariff classification of insulated cooler bags under the Harmonized Tariff Schedule of the United States

(HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before November 9, 2012.

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 9th Street, N.W. 5th Floor, Washington, D.C. 20229-1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20229 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: 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)), this notice advises interested parties that CBP is proposing to revoke three ruling letters pertaining to the tariff classification of insulated cooler bags. Although in this notice, CBP is

specifically referring to the revocation of New York Ruling Letters N024831, N024015, and N024016, issued by the Customs and Border Protection (CBP) National Commodity Division on April 7, 2008 and March 20, 2008, 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, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 notice of this proposed action.

In NY N024831 (Attachment A) and NY N024015 (Attachment B), CBP determined that certain insulated cooler bags were classified in subheading 4202.92.08, which provides for "Trunks, suitcases... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: With outer surface of textile materials: Other."

In NY N024016 (Attachment C), CBP determined that certain insulated cooler bags were classified in subheading 4202.92.10, HT-SUS, which provides for "Trunks, suitcases... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with

such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N024831, NY N024015, and NY N024016 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the cooler bags in subheadings 4202.92.10 and 4202.92.08, HTSUS, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H088427, set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 25, 2012

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N024831

April 7, 2008

CLA-2-42:OT:RR:NC:N3:341

CATEGORY: Classification

TARIFF NO.: 4202.92.0807

LORIANNE ALDINGER
RITE AID CORPORATION
P.O. BOX 3165
HARRISBURG, PA 17105

RE: The tariff classification of an insulated cooler bag from China

DEAR Ms. ALDINGER:

In your letter dated March 11, 2008 you requested a classification ruling. The sample which you submitted is being returned as requested.

Style 9000838 is a soft-sided insulated cooler bag constructed with a front and top panel of polyester textile material. The sides, back and bottom of the bag are constructed of polyvinyl chloride plastic (PVC) sheeting material. The essential character is imparted by the front panel of the cooler bag. It is designed to provide storage, protection, organization, and portability to food and beverages during travel. The bag is also designed to maintain the temperature of food and beverages. The interior compartment has a mesh pocket and is lined with PVC sheeting material. There is a layer of foam plastics between the outer surface and the PVC lining. It has a top zipper closure and an adjustable shoulder strap. The back exterior has an open pocket. The bag measures about 8" (W) x 5.5" (H) x 4.5" (D).

The applicable subheading for the insulated cooler bag will be 4202.92.0807, Harmonized Tariff Schedule of the United States (HTSUS), which provides for insulated food and beverage bags, with outer surface of textile materials, other, of man-made fibers. The duty rate will be 7% ad valorem.

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

HTSUS 4202.92.0807 falls within textile category 670. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, contact National Import Specialist Vikki Lazaro at 646-733-3041.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

N024015

March 20, 2008

CLA-2-42:OT:RR:NC:N3:341

CATEGORY: Classification

TARIFF NO.: 4202.92.0807

UNA GAUTHIER
BARTHCO INTERNATIONAL, INC.
ONE CVS DRIVE
MOONSOCKET, RI 02895

RE: The tariff classification of insulated cooler bags from China

DEAR MS. GAUTHIER:

In your letter dated February 25, 2008 on behalf of CVS/Pharmacy, you requested a classification ruling.

Each style has a front panel constructed of polyester textile material, while the sides, backs and bottoms of the bags are of polyvinyl chloride plastic (PVC) sheeting material. The essential character is imparted by the front panel of each insulated cooler bag.

Style 453474 is a two-piece insulated soft-sided lunch bag that is designed to provide storage, protection, organization, and portability to food and beverages during travel. It is also designed to maintain the temperature of food and beverages. The interior is lined with polyvinyl chloride plastic (PVC) sheeting material. There is a layer of foam plastics between the polyester fabric and the PVC lining. It consists of two separate compartments. The top compartment is empty with a front flap that secures with a hook and loop fastener and a zipper closure. A removable plastic food container is stored in the bottom compartment and secures with a zipper closure. Both pieces will be imported and sold at retail as a set. For classification purposes, the items are considered to be a set, GRI-3 (b) noted. The lunch bag will impart the essential character of the set. The top of the bag has a padded handle with a plastic clip that allows it to attach to a school bag or similar bag. It measures approximately 7" (W) x 11.5" (H) x 6" (D). The sample is being returned to you.

Style 453469 is an insulated soft-sided lunch bag that is designed to provide storage, protection, organization, and portability to food and beverages during travel. It is also designed to maintain the temperature of food and beverages. It has a main interior compartment that is lined with a polyvinyl chloride plastic sheeting material. There is a layer of foam plastics between the polyester fabric and the PVC lining. It secures with both a zipper closure and a hook and loop fastener. The top of the bag has a webbed padded carrying handle with a plastic clip that allows it to attach to a school bag or similar bag. It measures approximately 6.5" (W) x 10" (H) x 3" (D). The sample is being returned to you.

Style 453471 is an insulated soft-sided lunch bag that is designed to provide storage, protection, organization, and portability to food and beverages during travel. It is also designed to maintain the temperature of food and beverages. It has a main interior compartment that is lined with a polyvinyl chloride plastic sheeting material. There is a layer of foam plastics between the polyester fabric and the PVC lining. It has a zipper closure and a padded carrying handle that allows the bag to be carried by either the top

or side. The front exterior has a pocket that secures with a hook and loop closure. It measures approximately 7.5" (W) x 10" (H) x 3" (D). The sample is being retained by this office.

Style 416959 is an insulated soft-sided lunch bag that is designed to provide storage, protection, organization, and portability to food and beverages during travel. It is also designed to maintain the temperature of food and beverages. It has a main interior compartment that is lined with a polyvinyl chloride plastic sheeting material. There is a layer of foam plastics between the polyester fabric and the PVC lining. It has a main compartment with a wire frame opening and a zipper closure. It has double webbed carrying handles and an adjustable removable shoulder strap. The front exterior of the bag has an open pocket with a hook and loop closure. It measures approximately 9" (W) x 10" (H) x 6.25" (D). The sample is being retained by this office.

Style 416961 is an insulated soft-sided lunch bag that is designed to provide storage, protection, organization, and portability to food and beverages during travel. It is also designed to maintain the temperature of food and beverages. It has a main interior compartment that is lined with a polyvinyl chloride plastic sheeting material. There is a layer of foam plastics between the polyester fabric and the PVC lining. It has a zipper closure along three sides and a top padded carrying handle. The front exterior has a pocket with a flap and a hook and loop closure. The side of the bag has a loop where a removable insulated water bottle is attached by its own carrying handle. Both pieces will be imported and sold at retail as a set. For classification purposes, the items are considered to be a set, GRI-3 (b) noted. The lunch bag will impart the essential character of the set. It measures approximately 7" (W) x 8" (H) x 3" (D). The sample is being returned to you.

The applicable subheading for the insulated lunch bags, styles 453474, 453469, 453471, 416959, and 416961 will be 4202.92.0807, Harmonized Tariff Schedule of the United States (HTSUS), which provides for insulated food and beverage bags, with outer surface of textile materials, other, of man-made fibers. The duty rate will be 7% ad valorem.

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

HTSUS 4202.92.0807 falls within textile category 670. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, contact National Import Specialist Vikki Lazaro at 646-733-3041.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

N024016

March 20, 2008

CLA-2-42:OT:RR:NC:N3:341

CATEGORY: Classification

TARIFF NO.: 4202.92.1000

UNA GAUTHIER
BARTHCO INTERNATIONAL
ONE CVS DRIVE
WOONSOCKET, RI 02895

RE: The tariff classification of an insulated cooler bag from China

DEAR Ms GAUTHIER:

In your letter dated February 25, 2008 on behalf of CVS/Pharmacy, you requested a tariff classification ruling. The samples which you submitted are being returned as requested.

Style 453799 is a soft-sided insulated cooler bag that is designed to provide storage, protection, organization, and portability to food and beverages during travel. It is also designed to maintain the temperature of food and beverages. The bag is constructed with a front panel of polyvinyl chloride (PVC) sheeting material while the remaining three sides are constructed of polyester textile material. There is a layer of polyurethane foam plastic between the outer surface and the lining. The bag also has a top carrying handle and a zipper closure. It measures approximately 7.50" (W) x 9" (H) x 3" (D).

The applicable subheading for the insulated cooler bag will be 4202.92.1000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for insulated food and beverage bags, with outer surface of sheeting of plastic, other. The duty rate will be 3.4% ad valorem.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Vikki Lazaro at 646-733-3041.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

HQ H088427
CLA-2 OT:RR:CTF:TCM H088427 CkG
CATEGORY: Classification
TARIFF NO.: 4202.92.10, 4202.92.08

UNA GAUTHIER
BARTHCO INTERNATIONAL
ONE CVS DRIVE
WOONSOCKET, RI 02895

Re: Proposed revocation of NY N024831, NY N024015 and NY N024016;
classification of insulated cooler bags

DEAR Ms. GAUTHIER:

This is in reference to New York Ruling Letters (NY) N024831, issued by the Customs and Border Protection (CBP) National Commodity Division to Rite Aid Corporation on April 7, 2008, and NY N024015 and NY N024016, issued to you on March 20, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of insulated food and beverage bags.

We have reconsidered these decisions. For the reasons set forth below, we have determined that the classification of the containers in subheading 4202.92.08, HTSUS (NY N024015 and NY N024831), as insulated food or beverage bags having an outer surface of textile, and 4202.92.10 (NY N024016), as insulated food or beverage bags having an outer surface of other than textile, is incorrect.

FACTS:

In NY N024831, the subject merchandise was described as follows:

Style 9000838 is a soft-sided insulated cooler bag constructed with a front and top panel of polyester textile material. The sides, back and bottom of the bag are constructed of polyvinyl chloride plastic (PVC) sheeting material... It is designed to provide storage, protection, organization, and portability to food and beverages during travel. The bag is also designed to maintain the temperature of food and beverages. The interior compartment has a mesh pocket and is lined with PVC sheeting material. There is a layer of foam plastics between the outer surface and the PVC lining. It has a top zipper closure and an adjustable shoulder strap. The back exterior has an open pocket. The bag measures about 8" (W) x 5.5" (H) x 4.5" (D).

In NY N024015, the subject styles 453474, 453469, 453471, 416959, and 416961, were generally described as:

[A]n insulated soft-sided lunch bag designed to provide storage, protection, organization, and portability to food and beverages during travel. They are also designed to maintain the temperature of food and beverages. Each has a main interior compartment that is lined with a polyvinyl chloride plastic sheeting material. There is a layer of foam plastics between the polyester fabric and the PVC lining. The bags secure with both a zipper closure and a hook and loop fastener. The top of the bags has a padded carrying handle with a plastic clip that allows it to attach to a school bag or similar bag.

Each style has a front panel constructed of polyester textile material, while the sides, backs and bottoms of the bags are of polyvinyl chloride plastic (PVC) sheeting material

Style 453474 measures approximately 7" (W) x 11.5" (H) x 6" (D)...Style 453471 measures approximately 7.5" (W) x 10" (H) x 3" (D)... Style 416959 measures approximately 9" (W) x 10" (H) x 6.25" (D)...Style 416961 measures approximately 7" (W) x 8" (H) x 3" (D).

The merchandise at issue in NY N024016 was described as follows:

Style 453799 is a soft-sided insulated cooler bag that is designed to provide storage, protection, organization, and portability to food and beverages during travel. It is also designed to maintain the temperature of food and beverages. The bag is constructed with a front panel of polyvinyl chloride (PVC) sheeting material while the remaining three sides are constructed of polyester textile material. There is a layer of polyurethane foam plastic between the outer surface and the lining. The bag also has a top carrying handle and a zipper closure. It measures approximately 7.50" (W) x 9" (H) x 3" (D).

Photographs are available for the merchandise at issue in NY N024831. The front panel of the soft sided cooler bag at issue in NY N024831 features an orange "Igloo" logo, but otherwise does not differ in any visual aspect from the remainder of the bag.

ISSUE:

Whether the essential character of the instant cooler bags is imparted by the textile or plastic outer surface.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6. GRI 6, HTSUS, requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable. The GRI's apply in the same manner when comparing subheadings within a heading.

4202: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:

Other:

4202.92:	With outer surface of sheeting of plastic or of textile materials:
	Insulated food or beverage bags:
	With outer surface of textile materials:
4202.92.08:	Other
4202.92.10:	Other . . .
* * * * *	

There is no dispute that the instant cooler bags are classified in heading 4202, HTSUS, as insulated food or beverage bags. The issue arises at the 8 digit subheading level, which requires the application of GRI 6. GRI 6 requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable.

At the eight-digit subheading level, the issue is whether the instant insulated food or beverage bags have an outer surface of textile or non-textile material. Because the instant bags have outer panels of both textile and plastic, classification is determined by application of GRI 3.

GRI 3 states, in pertinent part:

When by application of [GRI] 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods . . . , those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components . . . which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The headings covering the article refer only to part of the materials or components contained therein. Therefore, under GRI 3(a), the headings must be regarded as equally specific in relation to the article, and the article must be classified as if it consisted of the material or component which gives it its essential character, pursuant to GRI 3(b).

The “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005). EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” The classification of the instant cooler bags will thus turn on which component imparts the essential character to the whole.

The front and top panels of the bags at issue in NY N024831 (style 900838) have an outer surface of man-made textile material. The sides, back and bottom are constructed of polyvinyl chloride plastic (PVC) sheeting material.

In NY N024018, the bags at issue (styles 453474, 453469, 453471, 416959, and 416961), were composed of a front textile panel and five panels of plastic sheeting. CBP ruled that the essential character of the bags was imparted by the front textile panel. In NY N024016, the front panel of the bag was made of plastic sheeting, and the remaining sides were composed of a polyester textile material. CBP found in NY N024016 that the essential character of the bag was imparted by the plastic front panel. We now find that these rulings were incorrect, and that the essential character of the bags at issue is imparted by the material that comprises the bulk of the outer surface area of the bags.

CBP has consistently determined that the material comprising the bulk of the exterior surface area of a bag imparts the essential character, even where the front panel featured a visually appealing design such as a cartoon character. *See e.g.*, NY M82559, dated May 2, 2006 (in which three bags with front panels of PVC sheeting featuring Dora the Explorer, Tinkerbell, and SpongeBob motifs were classified according to the majority textile outer surface area) and NY M84189, dated June 16, 2006 (in which two bags with PVC front panels depicting a Cars theme were classified on the basis of the textile outer surface area). *See also*, HQ H025873, dated September 3, 2010 (classifying a cooler bag in accordance with the majority of the exterior surface area); HQ 962817, dated January 14, 2002 (four panels with an outer surface of plastic imparted the essential character of a bag because they comprised the bulk of the outer surface of the bag); NY K83596, dated March 3, 2004 (classifying a cooler bag with an exterior surface of an equal quantity of plastic and textile material at GRI 3(c) in subheading 4202.92.10, HTSUS).

The front panel of an insulated food or beverage bag might impart the essential character to the whole in cases where the panel provides a visual and significant effect, or where it is valued or weighs more than the other components. For instance, in NY N047035, dated December 18, 2008, CBP classified a similar cooler bag based on the textile material composing the front and top panels of the bag. The sides, back and bottom of the bag were composed of plastic sheeting. In that case, the top of the bag extended into a pyramid shape. The sides of the top portion were also composed of textile. The textile surface thus comprised roughly 40% of the external surface area of the bag, the bag logo was present on the front textile panel, and the textile material was more valuable than the plastic sheeting. Based on these factors, CBP correctly classified the cooler bag at issue in NY N047035 according to the textile material, even though it did not comprise the bulk of the external surface area of the bag.

However, this is not the case with regard to styles 9000838, 453474, 453469, 453471, 416959, 416961 and 453799. Style 9000838 has only two panels of textile material, and four panels of plastic sheeting. Styles 453474, 453469, 453471, 416959, and 416961 have only one panel of textile material, with the remainder of the external surface area composed of plastic sheeting. Finally, style 453799 consists of one panel of plastic sheeting surrounded by textile panels. In each of these cases, the material composing the front panel of the bags is only a small portion of the external surface area. Therefore a finding that the essential character is imparted by the bulk of the outer surface area is appropriate and consistent with past CBP rulings. Styles 9000838 (NY N024831), 453474, 453469, 453471, 416959, and 416961 (NY N024015) have an outer surface composed mostly of plastic. These styles are

therefore classified in subheading 4202.92.10, HTSUS, as insulated food or beverage bags with a non-textile outer surface material. Style 453799 (NY N024016) has an outer surface area composed primarily of textile. Style 453799 is thus classified in subheading 4202.92.08, HTSUS, as an insulated food or beverage bag with an outer surface of textile materials.

HOLDING:

The cooler bags at issue in NY N024831 and NY N024015 (Styles 9000838, 453474, 453469, 453471, 416959, and 416961) are classified in heading 4202, HTSUS, specifically subheading 4902.92.10, HTSUS, which provides for “Trunks, suitcases... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: Other.” The 2012 column one, general rate of duty is 3.4% *ad valorem*.

The cooler bag at issue in NY N024016 (Style 453799) is classified in subheading 4202.92.08, which provides for “Trunks, suitcases... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: With outer surface of textile materials: Other.” The 2012 column one, general rate of duty is 7% *ad valorem*.

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 online at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY N024016 (March 20, 2008), NY N024015 (March 20, 2008), and NY N024831 (April 7, 2008) are hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

REVOCAION OF A RULING LETTER AND REVOCAION OF TREATMENT RELATING TO CLASSIFICATION OF ONE OUNCE PLASTIC CUPS

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

ACTION: Notice of revocation of a ruling letter and treatment relating to the classification of one ounce plastic cups.

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 CBP is revoking a ruling letter concerning the classification of one ounce plastic cups 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. 46, No. 28, on July 5, 2012. CBP received no comments in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 10, 2012.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 commu-

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice proposing to revoke New York Ruling Letter (NY) H81035, dated June 8, 2001, was published on July 5, 2012, in Volume 46, Number 28, of the *Customs Bulletin*. CBP received no comments in response to this notice.

Although in this notice CBP is specifically referring to NY H81035, 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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice covers any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is 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 his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY H81035 in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter H176516, 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), the ruling will become effective 60 days after the publication in the *Customs Bulletin*.

Dated: September 25, 2012

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

Attachment

HQ H176516

September 20, 2012

CLA-2 OT:RR:CTF:TCM HQ H176516 TNA

CATEGORY: Classification

TARIFF NO.: 3926.90.99

MR. CONOR O'MALLEY
OAK RIDGE PRODUCTS, INC.
211 BERG STREET
ALGONQUIN, IL 60102

RE: Revocation of NY H81035; Classification of one ounce plastic cups from Hong Kong

DEAR MR. O'MALLEY:

This letter is in reference to New York Ruling Letter ("NY") H81035, issued to Oak Ridge Products, Inc. on June 8, 2001, concerning the tariff classification of one ounce plastic cups from Hong Kong. There, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 3924.10.50, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Tableware, kitchenware, other household articles...of plastics: tableware and kitchenware: other."¹ We have reviewed NY H81035 and found it to be in error. For the reasons set forth below, we hereby revoke NY H81035.

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 revoke NY H81035 was published in the *Customs Bulletin*, Vol. 46, No. 28, on July 5, 2012. No comments were received in response to this notice.

FACTS:

The subject merchandise consists of one-ounce plastic cups made entirely of polypropylene. The cups are graduated in shape and have markings on the side of the cup that denote various measurements, such as ounces, teaspoons, drams, centimeters and millimeters.

The subject cups are sold wholesale to school systems, food distributors, retirement homes and hospital groups. The importer claims that the cups are primarily used to administer oral medication in these settings. A sample of the subject merchandise has been received and examined by this office.

ISSUE:

Whether graduated one ounce plastic cups are classified in heading 3924, HTSUS, as other kitchenware, or in heading 3926, HTSUS, as other articles of plastic?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative

¹ We note that subheading 3924.10.50, HTSUS, which appeared in the 2001 tariff schedule, is now subheading 3924.10.40 of the 2012 HTSUS. As a result, we will consider subheading 3924.10.40, HTSUS, in this ruling.

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 GRI may then be applied.

The HTSUS provisions under consideration are as follows:

- | | |
|------|--|
| 3924 | Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: |
| 3926 | Other articles of plastics and articles of other materials of headings 3901 to 3914: |

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN to heading 3924, HTSUS, provides, in pertinent part:

This heading covers the following articles of plastics:

- (A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.
- (B) Kitchenware such as basins, jelly moulds, kitchen jugs, storage jars, bins and boxes (tea caddies, bread bins, etc.), funnels, ladles, kitchen-type capacity measures and rolling-pins.
- (C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).
- (D) Hygienic and toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; teats for baby bottles (nursing nipples) and finger-stalls; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are **excluded (heading 39.25)**.

The heading also covers cups (without handles) for table or toilet use, not having the character of containers for the packing or conveyance of goods, whether or not sometimes used for such purposes. It **excludes**, however, cups without handles having the character of containers used for the packing or conveyance of goods (**heading 39.23**).

The EN to heading 3926, HTSUS, provides, in pertinent part:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

NY H81035 classified the subject plastic cups in heading 3924, HTSUS, as other plastic tableware and kitchenware. In HQ W968181, dated October 3, 2006, CBP examined the scope of heading 3924, HTSUS. There, we noted that the heading provides for, *inter alia*, other household articles of plastics. Furthermore, we noted that the heading covers tableware, kitchenware, and other household articles “such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust covers (slipcovers).” See HQ W968181, citing EN 39.24. HQ W968181 then cited *Nissho-Iwai American Corp. v. United States*, where the Court of International Trade (“CIT”) stated that the canon of construction *ejusdem generis*, which means “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” See HQ W968181, citing *Nissho-Iwai American Corp. v. United States*, 10 CIT 154, 156 (1986). The court continued by stating that “as applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. See also *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867, 871 (1994), *aff’d*. 69 F. 3d 495 (Fed. Cir. 1995). In HQ W968181, we then stated that the essential characteristics or purposes of the above-listed exemplars are that they are of plastic, are used in the household, and are reusable. See HQ W968181, page 4.

In NY H81035, after noting the physical characteristics of the subject merchandise, we stated that “the cups are considered kitchenware. Kitchenware is not restricted to the home.” Upon reconsideration, we believe that NY H81035 is incorrect because we no longer believe that the subject plastic cups are only used in the house. Thus, we examine whether the subject cups can be classified, *ejusdem generis*, in heading 3924, HTSUS, as “other household articles and hygienic or toilet articles.”

The subject cups are sold by Oak Ridge Products, a manufacturer and wholesaler of disposable plastic products primarily for medical industry. See <http://www.oakridgeproducts.com/AboutUs.aspx>. After examining the sample of the subject merchandise, we note that they are too flimsy to be reused. Furthermore, the chain of supply suggests that the subject cups are primarily used to administer oral medication, and their graduated design, with measurement markings on the side, is the type of plastic cups that are sold with medicine bottles. Lastly, the subject cups are sold to retirement homes, hospital groups, school systems and food service distributors. The instant merchandise is not sold to individuals for household use or to retailers that serve the household market. As a result, we find that the subject plastic cups do not meet the exemplars of heading 3924, HTSUS, and must be classified elsewhere.

Inasmuch as the instant merchandise is not described by the terms of heading 3924, HTSUS, the subject plastic cups are described by the terms of

heading 3926, HTSUS, as articles of plastic not elsewhere specified or included. As a result, we find that they are classified in heading 3926, HTSUS. This decision is consistent with prior CBP rulings. *See* NY N043950, dated November 26, 2008 (classifying one-ounce medicine cup of polypropylene plastic with incremental measurements shown on the side, used in administering medicine, in subheading 3926.90.99, HTSUS); NY 815693, dated November 7, 1995 (classifying a one-ounce plastic medicine cup with incremented measurements on the side of the cup in ounces, drams, cc's and ml's that was used in hospitals and doctors' offices in subheading 3926.90.98, HTSUS.)

HOLDING:

Under the authority of GRI 1, the subject one ounce plastic cups are classified in heading 3926, HTSUS, and specifically in subheading 3926.90.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." The 2012 column one general rate of duty is 5.3% *ad valorem*.

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/.

EFFECT ON OTHER RULINGS:

NY H81035, dated June 8, 2001, is 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

REVOCATION AND MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WORK FOOTWEAR

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

ACTION: Notice of modification of one ruling letter and revocation of one ruling letter and revocation of treatment relating to the tariff classification of work footwear.

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 inter-

ested parties that U.S. Customs and Border Protection (“CBP”) is modifying one ruling and revoking one ruling concerning the tariff classification of work footwear under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on August 15, 2012, in the Customs Bulletin, Volume 46, Number 34. 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 December 10, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325-0274.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on August 15, 2012, in the Customs Bulletin, Volume 46, Number 34, proposing to revoke one ruling letter and to modify one ruling letter pertaining to the tariff classification of certain footwear. Although in the proposed notice, CBP is specifically referring to the

revocation of New York Ruling Letter (“NY”) NY N039199, dated October 23, 2008, and to the modification of NY N039198, dated October 23, 2008, 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., a 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 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in a substantially identical transaction 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 of this notice.

In NY N039198 and NY N039199, CBP classified footwear articles under subheading 6403.99.6075, HTSUSA, as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: [o]ther footwear: [o]ther: [o]ther: [o]ther: [o]ther: [f]or men, youths and boys: [o]ther: [o]ther: [f]or men: [o]ther” and under subheading 6403.99.9065, HTSUSA, as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: [o]ther footwear: [o]ther: [o]ther: [o]ther: [o]ther: [f]or other persons: [v]alued over \$2.50/pair: [o]ther: [o]ther: [f]or women: [o]ther.” Upon our review of these two rulings, we have determined that the merchandise described in the rulings are properly classified under subheading 6403.99.6025, HTSUSA, as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: [o]ther footwear: [o]ther: [o]ther: [o]ther: [o]ther: [f]or men, youths and boys: [w]ork footwear” or under subheading 6403.99.9015, HTSUSA, as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: [o]ther footwear: [o]ther: [o]ther: [o]ther: [f]or other persons: [v]alued over \$2.50/pair: [w]ork footwear.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N039199 and modifying NY N039198, 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 Head-

quarters Ruling Letter (“HQ”) H050119, 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.

Dated: September 25, 2012

Sincerely,

LEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H050119

September 20, 2012

CLA-2 OT: RR: CTF: TCM H050119 RES

CATEGORY: Classification

TARIFF NO.: 6403.99.6025; 6403.99.9015

ROBERT J. LEO

MEEKS, SHEPPARD, LEO & PILLSBURY

570 LEXINGTON AVENUE, 44TH FLOOR

NEW YORK, NY 10022

RE: Modification of New York Ruling N039198, dated October 23, 2008; Revocation of New York Ruling N039199, dated October 23, 2008; Classification of Work Footwear.

DEAR MR. LEO:

This is in response to your letter dated January 21, 2009, on behalf of Sears Holding Corporation (“Sears”) for reconsideration of New York Ruling Letters (“NY”) N039198 and N039199, both issued on October 23, 2008, regarding the classification, under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), of certain footwear. The merchandise in these rulings were classified under subheadings 6403.99.6075 and 6403.99.9065, HTSUSA. We have reviewed NY N039198 and NY N039199 and determined that they are incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on August 15, 2012, in Volume 46, Number 34, of the *Customs Bulletin*. CBP did not receive any comments during the notice period.

FACTS:

In NY N039198, the articles were described as follows:

[S]tyle[s] KM-0112 and 65025 have uppers of 51 percent leather and 49 percent polyurethane (rubber/plastics) material, while style[s] 65029 and 65120 have uppers of 100 percent leather. . . .

The submitted samples of style # KM-0112, 65025 and 65120 are all below-the-ankle, lace up shoes with outer soles of rubber/plastics and uppers of predominantly leather. Style 65029 is a slip-on shoe. Aside from the “slip-resistant” outer sole, this office finds no evidence that the subject footwear is designed specifically for occupations such as agricultural, construction, industrial, public safety or transportation sectors. In this regard, the subject footwear is not “work footwear” as described in the note [Statistical Note 1(a) to Chapter 64, HTSUSA].

Also, style 65025 has a steel toe. CBP classified styles KM-0112, 65025, and 65120 under subheading 6403.99.6075, HTSUSA, as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: [o]ther footwear: [o]ther: [o]ther: [o]ther: [o]ther: [f]or men, youths and boys: [o]ther: [o]ther: [f]or men: [o]ther.”

In NY N039199, the articles were described as follows:

[S]tyle 65005 (men’s) and styles 65131 and 65118 (women’s) have uppers of 51 percent leather and 49 percent polyurethane (rubber/plastics) material. [S]tyle 65021 (men’s) has an upper of 100 percent leather. . . .

* * * * *

For the purposes of this ruling, the submitted samples are all below-the-ankle, lace up shoes with outer soles of rubber/plastics and uppers of predominantly leather. Aside from the “slip-resistant” outer sole, this office finds no evidence that the subject footwear is designed specifically for occupations such as agricultural, construction, industrial, public safety or transportation sectors. In this regard, the subject footwear is not “work footwear” as described in the note [Statistical Note 1(a) to Chapter 64, HTSUSA].

CBP classified styles 65005 and 65021 under subheading 6403.99.6075, HTSUSA, and classified styles 65131 and 65118 under subheading 6403.99.9065, HTSUSA, as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: [o]ther footwear: [o]ther: [o]ther: [o]ther: [f]or other persons: [v]alued over \$2.50/pair: [o]ther: [o]ther: [f]or women: [o]ther.”

The seven styles of footwear under reconsideration are the following style numbers: 65005, 65021, 65025, 65118, 65120, 65131, and KM-0112. Style number 65029 in NY N039198 is not at issue in this reconsideration. All of these styles are sold under Sears’s SAFETRAX[®] brand of footwear. This brand of footwear is generally sold on the Sears and Kmart websites under the “Work & Safety” sections.

Sears claims that all the styles at issue have the characteristics of “work” footwear and should be classified accordingly. As evidence of its claim, Sears has provided product samples, a marketing brochure it sends to businesses, and a customer list on a Compact Disc (“CD”) consisting of companies in the restaurant and food service industry.

ISSUE:

Whether the footwear constitutes work footwear as defined in Statistical Note 1(a) of Chapter 64, HTSUSA.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings 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 may be applied in order.

GRI 6 provides that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 6.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUSA headings under consideration in this case are as follows:

- 6403 Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather:
 - * * *
 - Other Footwear:
 - * * *
- 6403.99 Other:
 - Other:
 - Other:
 - Other:
 - 6403.99.60 For men, youths and boys:
 - 6403.99.6025 Work Footwear
 - Other:
 - Other:
 - For men:
 - 6403.99.6075 Other
 - * * *
 - For other persons:
 - 6403.99.90 Valued over \$2.50/pair:
 - 6403.99.9015 Work footwear
 - Other:
 - * * *
 - Other:
 - For Women:
 - 6403.99.9065 Other

Chapter 64, HTSUSA, Statistical Note 1(a) provides in pertinent part:

1. For the Purposes of this chapter:

(a) The expression “*work footwear*” encompasses, in addition to footwear having a metal toe-cap, specialized footwear for men or for women that:

- has outer soles of rubber or plastics, and
- is of a kind designed for use by persons employed in occupations, such as those related to the agricultural, construction, industrial, public safety and transportation sectors, that are not conducive to the use of casual, dress, or similar lightweight footwear, and
- has special features to protect against hazards in the workplace (e.g., resistance to chemicals, compression, grease, oil, penetration, slippage, or static-buildup)

Work footwear does not cover:

- sports footwear, tennis shoes, basketball shoes, gym shoes, training shoes and the like;
- foot designed to be worn over other footwear;

- footwear with open toes or open heels; or
- footwear, except footwear of heading 6401, of the slip-on type or other footwear that is held to the foot without the use of laces or a combination of laces and hooks or other fasteners

The importer is not disputing the underlying classification of the footwear to the national eight-digit level in subheadings 6403.99.60 and 6403.99.90, HTSUS. Rather, the importer disputes the classification of the footwear articles at the ten-digit level in subheadings 6403.99.6075 and 6403.99.9065, HTSUSA, and claims that the footwear is classified as work footwear under subheadings 6403.99.6025 and 6403.99.9015, HTSUSA. The importer asserts that the footwear meets the definition of work footwear as defined in Statistical Note 1(a) of Chapter 64, HTSUSA. The importer cites as support for its position the following CBP rulings: NY N028675, dated May 30, 2008; NY N028676, dated June 2, 2008; NY N012971, dated July 3, 2007; NY N006180, dated March 1, 2007; and NY N004747, January 4, 2007.

In NY N012971, the merchandise at issue consisted of five styles of footwear with outer soles of rubber or plastics and uppers of leather. The outsoles had a special oil and slip resistant technology. One style had a strap and buckle closure, one a slide fastener, and the remaining three styles had lace-tie closure systems. The importer claimed that the footwear was designed and marketed to be used by people employed in restaurant, public safety, transportation, and other service occupations and provided a restaurant and hospitality work footwear catalogue selling the styles at issue in NY N012971 as support for their claim. Pursuant to Statistical Note 1(a) of Chapter 64, HTSUSA, CBP classified all 5 styles in NY N012971 as work footwear under either subheading 6403.99.6025 or subheading 6403.99.9015, HTSUSA.

In NY N028676 (which involved the same importer as in NY N012971), the merchandise at issue consisted of two styles of footwear with outer soles of rubber or plastics and uppers of leather. The outsoles had a special oil and slip resistant technology. The women's styles were designed for and marketed to women in the restaurant and other service industries. The men's styles were designed for and marketed to men in the public safety, transportation, and service sectors. The importer provided a restaurant and hospitality work footwear catalogue selling the styles at issue in NY N028676. Pursuant to Statistical Note 1(a) of Chapter 64, HTSUSA, CBP classified both styles in NY N028676 as work footwear under either subheading 6403.99.6025 or subheading 6403.99.9015, HTSUSA.

In NY N006180, the articles at issue were five styles of footwear with outer soles of rubber or plastics and uppers of leather. The footwear styles had either a lace-up or a hook & loop closure system and all featured a specially designed outer sole described as being oil and slip resistant. The articles were marketed to be used by people employed in the medical and restaurant industries. Pursuant to Statistical Note 1(a) of Chapter 64, HTSUSA, CBP classified all 5 styles in NY N006180 as work footwear under either subheading 6403.99.6025 or subheading 6403.99.9015, HTSUSA.

In NY N006716, dated February 27, 2007, the article at issue was described as a men's law enforcement work shoe with a heavy duty, oil and slip resistant rubber/plastic sole, and a leather upper that did not cover the ankle. The shoe also had a steel shank, an upper with water proofing

protection, EVA plastic filled cutout zones in the heel and forefoot, and a “dual-density” polyurethane midsole for long wearing comfort. The importer provided a work footwear catalogue marketing and selling the article for use by people employed in the law enforcement and/or the public safety industry. Pursuant to Statistical Note 1(a) of Chapter 64, HTSUSA, CBP classified the article as work footwear under subheading 6403.99.6025, HTSUSA.

Three of the above rulings show that CBP has interpreted Statistical Note 1(a) to Chapter 64, HTSUSA, as also covering footwear for persons employed in the food service industry.

In NY N004747, the three articles at issue were of the same SAFETRAX[®] line of footwear considered in NY N039198 and N039199, but different style numbers. These articles of footwear were described as “low cut work shoes with outer soles of rubber or plastics and uppers of leather” with two of the styles being lace-up shoes and a third described as being a slip-on. The footwear also featured a “specially designed, relatively rigid, outer sole that is described as slip and oil resistant” and the footwear was to be used by employees in food processing plants, restaurants, supermarkets, hospitals, and other industrial sites. Pursuant to Statistical Note 1(a) of Chapter 64, HTSUSA, CBP classified the two lace-up styles as work footwear under subheadings 6403.99.6025, and 6403.99.9015, HTSUSA. The slip-on style was not classified as work footwear.

In regard to the styles at issue here, Sears asserts that they are all designed and marketed to be used by people employed in food processing plants, restaurants, supermarkets, hospitals, other service sector businesses, and other industrial sites. To support their claims, Sears provided sales and marketing literature that is sent to potential customers in the food industry marketing their SAFETRAX[®] line of footwear for use by employees in the food service and restaurant businesses and a list of customers that use this line of footwear for their employees. The sales and marketing literature is the same as that for the styles classified in NY N004747. All of these customers are major businesses in the food industry sector.

In light of the evidence provided by Sears and an examination of samples of the footwear, these articles meet the requirements enumerated in Statistical Note 1(a) of Chapter 64, HTSUSA, to be considered work footwear. The footwear has outer soles of rubber or plastics, marketing and sales materials substantiate that the footwear was designed for use by food service industry employees, and the footwear has special oil and slip resistance features to protect against slippage and other hazards. In addition, the footwear styles do not have any of the features listed in Statistical Note 1(a) that work footwear does not have.

Furthermore, the finding that the footwear styles at issue here are work footwear based on the evidence provided and on the features of the articles is also congruent with how CBP has classified similar articles in NY N012971, NY N028676, NY N006180, and NY N006716. In addition, the fact that the styles at issue are marketed in the same manner as the similar styles of the SAFETRAX[®] classified as work footwear in NY N004747 is highly supportive of Sears’s claim that the styles at issue here are classifiable as work footwear.

Therefore, the SAFETRAX[®] line of footwear styles at issue in NY N039198 and NY N039199 are classifiable as work footwear. Style numbers KM-0112, 65205, 65120, 65005, and 65021 are classified under subheading 6403.99.6025, HTSUSA, as work footwear for men. Style numbers 65131 and

65118 are classified under subheading 6403.99.9015, HTSUSA, as work footwear valued over \$2.50/pair.

HOLDING:

By application of GRI 1, GRI 6, and Statistical Note 1(a) of Chapter 64, HTSUSA, the articles with style numbers KM-0112, 65025, 65120, 65005, and 65021 are classified under subheading 6403.99.6025, HTSUSA, as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: [o]ther footwear: [o]ther: [o]ther: [o]ther: [o]ther: [f]or men, youths and boys: [w]ork footwear,” with a 2012 column one rate of duty of 8.5 percent, *ad valorem*.

By application of GRI 1, GRI 6, and Statistical Note 1(a) of Chapter 64, HTSUSA, the articles with style numbers 65131 and 65118 are classified under subheading 6403.99.9015, HTSUSA, as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: [o]ther footwear: [o]ther: [o]ther: [o]ther: [o]ther: [f]or other persons: [v]alued over \$2.50/pair: [w]ork footwear,” with a 2012 column one rate of duty of 10 percent, *ad valorem*.

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 World Wide Web at www.usitc.gov/tata/hts/.

EFFECTS ON OTHER RULINGS:

NY N039198, dated October 23, 2008, is hereby modified.

NY N039199, dated October 23, 2008, is hereby revoked.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES:

Declaration for Free Entry of Returned American Products

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration for Free Entry of Returned American Prod-

ucts (CBP Form 3311). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before November 20, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177.

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). 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 cost burden to respondents or record keepers from the collection of information (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: Declaration of Free entry of Returned American Products.

OMB Number: 1651–0011.

Form Number: CBP Form 3311.

Abstract: CBP Form 3311, *Declaration for Free Entry of Returned American Products*, is used by importers and their agents when duty-free entry is claimed for a shipment of returned American products under the Harmonized Tariff Schedules of the United States. This form serves as a declaration that the goods are American made and that (a) They have not been advanced in value or improved in

condition while abroad, (b) were not previously entered under a Temporary Importation Under Bond provision, and (c) drawback was never claimed and/or paid. CBP Form 3311 is authorized by 19 CFR 10.1, 10.5, 10.6, 10.66, 10.67, 12.41, 123.4, 142.11, 143.21, 143.23, 143.25 and is accessible at http://forms.cbp.gov/pdf/CBP_Form_3311.pdf.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 3311.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Responses per Respondent: 35.

Estimated Number of Total Annual Responses: 420,000.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 42,000.

Dated: September 17, 2012.

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

[Published in the Federal Register, September 21, 2012 (77 FR 58564)]