

# U.S. Customs and Border Protection

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

USCBP-2013-0040

CBP Dec. 13-17

RIN 1515-AD93

## UNITED STATES-PANAMA 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-Panama Trade Promotion Agreement entered into by the United States and the Republic of Panama.

**DATES:** Interim rule effective October 23, 2013; comments must be received by December 23, 2013.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2013-0040.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

*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, 90 K Street NE., 10th 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:* Diane Liberta, Textile Operations Branch, Office of International Trade, (202) 863–6241.

*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 June 28, 2007, the United States and the Republic of Panama (the “Parties”) signed the United States-Panama Trade Promotion Agreement (“PANTPA” or “Agreement”).

On October 21, 2011, the President signed into law the United States-Panama Trade Promotion Agreement Implementation Act (the “Act”), Public Law 112–43, 125 Stat. 497 (19 U.S.C. 3805 note), which approved and made statutory changes to implement the PANTPA.

Section 103 of the Act requires that regulations be prescribed as necessary to implement the provisions of the PANTPA.

On October 29, 2012, the President signed Proclamation 8894 to implement the PANTPA. The Proclamation, which was published in the **Federal Register** on November 5, 2012, (77 FR 66507), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of Publication 4349 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 35, incorporating the relevant PANTPA 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 PANTPA where the special program indicator “PA” appears in parenthesis in the “Special” rate of duty subcolumn. The modifications to the HTSUS also included a new Subchapter XIX to Chapter 99 to provide for temporary tariff-rate quotas and applicable safeguards implemented by the PANTPA, as well as modifications to Subchapter XXII of 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 PANTPA effective on or after October 31, 2012.

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

Certain general definitions set forth in Chapter Two of the PANTPA have been incorporated into the PANTPA implementing regulations. These regulations also implement Article 3.6 (Goods Re-entered after Repair or Alteration) of the PANTPA.

Chapter Three of the PANTPA sets forth provisions relating to trade in textile and apparel goods between Panama and the United States. The provisions within Chapter Three that require regulatory action by CBP are Articles 3.21 (Customs Cooperation), Article 3.25 (Rules of Origin and Related Matters), and Article 3.30 (Definitions).

Chapter Four of the PANTPA 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 PANTPA 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 35, 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 PANTPA Annex 4.1 (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); packaging materials and containers for retail sale (Article 4.9; section 203(i) of the Act); packing materials and containers for shipment (Article 4.10; section 203(j) of the Act); indirect materials used in production (Article 4.11; section 203(k) of the Act); transit and transshipment (Article 4.12; section 203(l) of the Act); sets of goods (Article 4.13; section 203(m) of the Act); and consultation and modifications (Article 4.14). All Articles within Section A are reflected in the PANTPA implementing regulations, except for Article 4.14 (Consultation and Modifications).

Section B of Chapter Four sets forth procedures that apply under the PANTPA in regard to claims for preferential tariff treatment. Specifically, Section B includes provisions concerning: claims of origin (Article 4.15); obligations relating to importations (Article 4.16) and exportations (Article 4.18); exceptions to the certification requirement (Article 4.17); recordkeeping requirements (Article 4.19); verification of preference claims (Article 4.20); common guidelines (Article 4.21); application of certain provisions (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 (Application of Certain Provisions) are reflected in these implementing regulations.

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

The majority of the PANTPA implementing regulations set forth in this document have been included within a new Subpart S in Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which PANTPA implementation is more appropriate in the context of an existing regulatory provision, the PANTPA 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 PANTPA 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 Panama 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, the Republic of Korea, or Colombia, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of PANTPA Article 3.5 (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 S*

#### General Provisions

Section 10.2001 outlines the scope of Subpart S, Part 10 of the CBP regulations. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart S, 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 S, Part 10 are in addition to the basic entry requirements contained in Parts 141–143 of the CBP regulations.

Section 10.2002 sets forth definitions of common terms used within Subpart S, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 2.1 and Annex 2.1 of the PANTPA, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions that apply in a more limited Subpart S, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

### Import Requirements

Section 10.2003 sets forth the procedure for claiming PANTPA preferential tariff treatment at the time of entry and, as provided in PANTPA Article 4.15.1, states that an importer may make a claim for PANTPA 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 10.2003 also provides, consistent with PANTPA Article 4.16.4(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 10.2004, which is based on PANTPA Articles 4.15 and 4.16.4, 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 10.2004 specifies the information that must be included on the certification, sets forth the circumstances under which the certification may be prepared by the exporter 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 10.2005 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment. Section 10.2006, which is based on PANTPA Article 4.17, provides that the certification is not required for certain non-commercial or low-value importations.

Section 10.2007 implements PANTPA Article 4.19 concerning the maintenance of relevant records regarding the imported good.

Section 10.2008, which reflects PANTPA Article 4.16.2, authorizes the denial of PANTPA tariff benefits if the importer fails to comply with any of the requirements under Subpart S, Part 10, CBP regulations.

### Export Requirements

Section 10.2009, which implements PANTPA Articles 4.18.1 and 4.19.1, sets forth certain obligations of a person who completes and issues a certification for a good exported from the United States to

Panama. Paragraphs (a) and (b) of § 10.2009, reflecting PANTPA Article 4.18.1, 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 § 10.2009 reflects Article 4.19.1, concerning the recordkeeping requirements that apply to a person who completes and issues a certification for a good exported from the United States to Panama.

#### Post-Importation Duty Refund Claims

Sections 10.2010 through 10.2012 implement PANTPA Article 4.16.5 and section 206 of the Act, which allow an importer who did not claim PANTPA 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 10.2013 through 10.2025 provide the implementing regulations regarding the rules of origin provisions of General Note 35, HTSUS, Chapter Four and Article 3.25 of the PANTPA, and section 203 of the Act.

#### Definitions

Section 10.2013 sets forth terms that are defined for purposes of the rules of origin as found in section 203(n) of the Act and other definitions have been included to clarify the application of the regulatory texts.

#### General Rules of Origin

Section 10.2014 sets forth the basic rules of origin established in Article 4.1 of the PANTPA, section 203(b) of the Act, and General Note 35, HTSUS. The provisions of § 10.2014 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 35, HTSUS.

Section 10.2014(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 10.2014(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 35, HTSUS, are originating goods. Essential to the rules in § 10.2014(b) are the specific rules of General Note 35, HTSUS.

Section 10.2014(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 10.2015 reflects PANTPA 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 10.2016, reflecting PANTPA Articles 4.3 and 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 10.2017, which is derived from PANTPA 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 PANTPA.

#### De Minimis

Section 10.2018, as provided for in PANTPA 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 § 10.2014. There are a number of exceptions to the *de minimis* rule set forth in PANTPA Annex 4.6 (Exceptions to Article 4.6) as well as a separate rule for textile and apparel goods.



## Fungible Goods and Materials

Section 10.2019, as provided for in PANTPA 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 10.2020, as provided for in PANTPA 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 used in the production of the good undergo an applicable change in tariff classification under General Note 35, HTSUS.

## Goods Classifiable as Goods Put Up in Sets

Section 10.2021, as provided for in PANTPA Articles 3.25.9 and 4.13, and section 203(m) of the Act, provides that, notwithstanding the specific rules of General Note 35, 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 10.2022 and 10.2023, as provided for in PANTPA Articles 4.9 and 4.10, 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 35, 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 10.2024, as provided for in PANTPA Article 4.11 and section 203(k) of the Act, provides that indirect materials, as defined in § 10.2013(i), are considered to be originating materials without regard to where they are produced.

## Transit and Transshipment

Section 10.2025, as provided for in PANTPA Article 4.12 and section 203(1) 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 10.2026 implements PANTPA Article 4.20 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to PANTPA 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 PANTPA preferential duty treatment is claimed.

Section 10.2027, as provided for in PANTPA Article 3.21 and section 208 of the Act, sets forth the verification and enforcement procedures specifically relating to trade in textile and apparel goods.

Section 10.2028 also implements PANTPA Articles 3.21 and 4.20, and sections 205 and 208 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 S, Part 10 of the CBP regulations.

Section 10.2029 implements PANTPA Article 4.20.5 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 PANTPA preference claims.

## Penalties

Section 10.2030 concerns the general application of penalties to PANTPA transactions and is based on PANTPA Article 5.9 and section 205 of the Act.

Section 10.2031 implements PANTPA Article 4.16.3 and section 205 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 10.2032 implements PANTPA Article 4.18.2 and section 205 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 Panama.

Section 10.2033 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 10.2033(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 10.2034 implements PANTPA Article 3.6 regarding duty-free treatment for goods re-entered after repair or alteration in Panama.

### **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 PANTPA.

#### *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 is the scope section of the part, to refer readers to the additional PANTPA records maintenance and examination provisions contained in Subpart S, Part 10, CBP regulations.

#### *Part 163*

A conforming amendment is made to § 163.1 (19 CFR 163.1) to include, as required by PANTPA Article 4.19, the maintenance by the importer, whose claim for preferential tariff treatment is based on either the importer’s certification or its knowledge, of all records and documents necessary to support a claim for preferential tariff treat-

ment under the PANTPA, including a PANTPA importer's certification. Also, based on PANTPA Article 4.19, the conforming amendment includes the maintenance by the importer, whose claim for preferential tariff treatment is based on the certification issued by the exporter or producer, of the certification issued by the exporter or producer. 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 and documents necessary to support a PANTPA claim for preferential tariff treatment, including, where applicable, the importer's certification or the exporter's or producer's certification.

#### *Part 178*

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget (OMB), 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 PANTPA 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 PANTPA. 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 OMB 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 PANTPA 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 §§ 10.2003, 10.2004, and 10.2007. This information is required in connection with general recordkeeping requirements (§ 10.2007), as well as claims for preferential tariff treatment under the PANTPA and the Act and will be used by CBP to determine eligibility for tariff preference under the PANTPA and the Act (§§ 10.2003 and 10.2004). The likely respondents are business organizations including importers, exporters and manufacturers. The burdens imposed by these regulations are:

Estimated total annual burden: 500 hours.

Estimated number of respondents: 2,500.

Estimated annual frequency of responses per respondent: 1.

Estimated average annual burden per response: .2 hours.

Comments concerning these 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, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

## **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 S 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 10.2001 through 10.2034 also issued under 19 U.S.C. 1202 (General Note 35, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112–43, 125 Stat. 497 (19 U.S.C. 3805 note).

■ 2. In § 10.31(f), the last sentence is revised to read 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, Colombia, or Panama 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, 34, and 35, HTSUS, in the country of which the importer is a resident.

■ 3. Add Subpart S to Part 10 to read as follows:

**Subpart S—United States-Panama Trade Promotion Agreement**

**General Provisions**

- Sec.
- 10.2001 Scope.
- 10.2002 General definitions.

**Import Requirements**

- 10.2003 Filing of claim for preferential tariff treatment upon importation.
- 10.2004 Certification.
- 10.2005 Importer obligations.
- 10.2006 Certification not required.
- 10.2007 Maintenance of records.
- 10.2008 Effect of noncompliance; failure to provide documentation regarding transshipment.

**Export Requirements**

- 10.2009 Certification for goods exported to Panama.

### **Post-Importation Duty Refund Claims**

- 10.2010 Right to make post-importation claim and refund duties.
- 10.2011 Filing procedures.
- 10.2012 CBP processing procedures.

### **Rules of Origin**

- 10.2013 Definitions.
- 10.2014 Originating goods.
- 10.2015 Regional value content.
- 10.2016 Value of materials.
- 10.2017 Accumulation.
- 10.2018 De minimis.
- 10.2019 Fungible goods and materials.
- 10.2020 Accessories, spare parts, or tools.
- 10.2021 Goods classifiable as goods put up in sets.
- 10.2022 Retail packaging materials and containers.
- 10.2023 Packing materials and containers for shipment.
- 10.2024 Indirect materials.
- 10.2025 Transit and transshipment.

### **Origin Verifications and Determinations**

- 10.2026 Verification and justification of claim for preferential tariff treatment.
- 10.2027 Special rule for verifications in Panama of U.S. imports of textile and apparel goods.
- 10.2028 Issuance of negative origin determinations.
- 10.2029 Repeated false or unsupported preference claims.

### **Penalties**

- 10.2030 General.
- 10.2031 Corrected claim or certification by importers.
- 10.2032 Corrected certification by U.S. exporters or producers.
- 10.2033 Framework for correcting claims or certifications.

### **Goods Returned After Repair or Alteration**

- 10.2034 Goods re-entered after repair or alteration in Panama.

## **Subpart S—United States-Panama Trade Promotion Agreement**

### **General Provisions**



**§ 10.2001 Scope.**

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Panama Trade Promotion Agreement (the PANTPA) signed on June 28, 2007, and under the United States-Panama Trade Promotion Agreement Implementation Act (“the Act”), Public Law 112–43, 125 Stat. 497 (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 PANTPA and the Act are contained in Parts 24, 162, and 163 of this chapter.

**§ 10.2002 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 PANTPA 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 the 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 3.25 (Rules of Origin and Related Matters) or Chapter Four (Rules of Origin and Origin Procedures) of the PANTPA, and General Note 35, HTSUS;

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

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

(r) *Preferential tariff treatment*. “Preferential tariff treatment” means the duty rate applicable under the PANTPA 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 (com-

monly referred to as “the ATC”), which is part of the WTO Agreement, except for those goods listed in Annex 3.30 of the PANTPA;

(u) *Territory*. “Territory” means:

(1) With respect to Panama, the land, maritime, and the air space under Panama’s sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(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**

### **§ 10.2003 Filing of claim for preferential tariff treatment upon importation.**

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

(1) A written or electronic certification, as specified in § 10.2004, that is prepared by the importer, exporter, or producer of the good; or

(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 “PA” 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* §§ 10.2031 and 10.2033).

**§ 10.2004 Certification.**

(a) *General.* An importer who makes a claim pursuant to § 10.2003(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 35, HTSUS;

(vi) The applicable rule of origin set forth in General Note 35, HTSUS, under which the good qualifies as an originating good;

(vii) Date of certification; and

(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 under-

stand 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-Panama 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.

### **§ 10.2005 Importer obligations.**

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.2003(b):

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

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.2004; 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 § 10.2031 through 10.2033).

#### **§ 10.2006 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 § 10.2004 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 § 10.2004, 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.

#### **§ 10.2007 Maintenance of records.**

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.2003(b) based on either the importer's certification or its knowledge must maintain, for a minimum of five years after the date of importation of the good, all records and documents necessary to demonstrate that the good qualifies for preferential tariff treatment under the PANTPA. An importer

claiming preferential tariff treatment for a good imported into the United States under § 10.2003(b) based on the certification issued by the exporter or producer must maintain, for a minimum of five years after the date of importation of the good, the certification issued by the exporter or producer. 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.

### **§ 10.2008 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 § 10.2004 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 PANTPA, 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 § 10.2025(a) were met.

## **Export Requirements**

### **§ 10.2009 Certification for goods exported to Panama.**

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Panama 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 Panama 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 §§ 10.2032 and 10.2033).

(c) *Maintenance of records*—(1) *General*. Any person who completes and issues a certification for a good exported from the United States to Panama 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)(1) 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**

### **§ 10.2010 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 § 10.2011. Subject to the provisions of § 10.2008, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.2012(c).

### **§ 10.2011 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. The post-importation claim may be filed by paper or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(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 § 10.2004 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.

#### **§ 10.2012 CBP processing procedures.**

(a) *Status determination.* After receipt of a post-importation claim pursuant to § 10.2011, 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 pursuant to § 10.2011 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 pursuant to § 10.2011 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 pursuant to § 10.2011 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 pursuant to § 10.2011 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 pursuant to § 10.2011.

(d) *Denial of claim*—(1) *General*. The port director may deny a claim for a refund filed under § 10.2011 if the claim was not filed timely, if the importer has not complied with the requirements of §§ 10.2008 and 10.2011, or if, following an origin verification under § 10.2026, 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 § 10.2026.

(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

### § 10.2013 Definitions.

For purposes of §§ 10.2013 through 10.2025:

(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 (o) 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 sub-

heading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS;

(2) Motor vehicles classified under subheading 8701.10 or any of 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, or motor vehicles classified under subheading 8704.21 or 8704.31, HTSUS; or

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

(c) *Enterprise*. “Enterprise” means an enterprise as defined in § 10.2002(g), and includes an enterprise involved in:

(1) Production, processing, or manipulation of textile or apparel goods in the territory of Panama, including in any free trade zone, foreign trade zone, or export processing zone;

(2) Importation of textile or apparel goods into the territory of Panama, including into any free trade zone, foreign trade zone, or export processing zone; or

(3) Exportation of textile or apparel goods from the territory of Panama, including from any free trade zone, foreign trade zone, or export processing zone;

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

(e) *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;

(f) *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;

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

(h) *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 (h)(1) through (h)(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 Panama 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 (h)(6) of this section, if such factory ships are:

(i) Registered or recorded with Panama and flying 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 (h)(1) through (h)(10) of this section, or from the derivatives of such goods, at any stage of production;

(i) *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;

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

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

(l) *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;

(m) *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;

(n) *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 35, HTSUS, or this subpart;

(o) *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;

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

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

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

(s) *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;

(t) *Remanufactured good*. “Remanufactured good” means a good 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 (s) of this section; and

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

(u) *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;

(v) *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 protection 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 pro-

motion, 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;

(w) *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;

(x) *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;

(y) *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;

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

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

**§ 10.2014 Originating goods.**

Except as otherwise provided in this subpart and General Note 35, HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the PANTPA 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 35, HTSUS, and the good satisfies all other applicable requirements of General Note 35, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 35, HTSUS, and satisfies all other applicable requirements of General Note 35, HTSUS; or

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

**§ 10.2015 Regional value content.**

(a) *General*. Except for goods to which paragraph (d) of this section applies, where General Note 35, 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 35, 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 any of 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 may be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraphs (d)(2) through (d)(4) 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 Panama 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.

**§ 10.2016 Value of materials.**

(a) *Calculating the value of materials.* For purposes of calculating the regional value content of a good under General Note 35, HTSUS, and for purposes of applying the *de minimis* (see § 10.2018) provisions of General Note 35, 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, 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 Panama purchases material x from an unrelated seller in Panama 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 Panama (\$100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Panama by the seller (or by anyone else). So long as the producer acquired material x in Panama, 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 Panama at or about the same time the goods were sold to the producer in Panama. Thus, if the seller of material x also sold an identical material to another buyer in Panama 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, 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, 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 35, 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.

**§ 10.2017 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 § 10.2014 and all other applicable requirements of General Note 35, HTSUS.

**§ 10.2018 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 35, 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 35, HTSUS; and

(3) The good meets all other applicable requirements of General Note 35, 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 heading 1006, HTSUS, that is used in the production of a good provided for in heading 1102 or 1103 or subheading 1904.90, HTSUS;

(6) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(7) 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;

(8) 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

(9) Except as provided in paragraphs (b)(1) through (b)(8) of this section and General Note 35, 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 35, 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 and finished in the territory of a Party. For purposes of this paragraph, “wholly formed and finished” means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

(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.

#### **§ 10.2019 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 management 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.

#### **§ 10.2020 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 35, 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 § 10.2015.

### **§ 10.2021 Goods classifiable as goods put up in sets.**

Notwithstanding the specific rules set forth in General Note 35, 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; or

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

### **§ 10.2022 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 PANTPA 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 35, 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.* Panamanian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.2016(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 § 10.2015(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 § 10.2015(c)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

### **§ 10.2023 Packing materials and containers for shipment.**

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.2013(o), 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 35, 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 § 10.2013(o), 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.* Panamanian 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 Panama. The shipping container is originating. The value of the shipping container determined under § 10.2016(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 § 10.2015(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.

#### **§ 10.2024 Indirect materials.**

An indirect material, as defined in § 10.2013(i), will be considered to be an originating material without regard to where it is produced.

*Example.* Panamanian 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 § 10.2014(b)(1) and General Note 35, 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.

#### **§ 10.2025 Transit and transshipment.**

(a) *General.* A good that has undergone production necessary to qualify as an originating good under § 10.2014 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**

#### **§ 10.2026 Verification and justification of claim for preferential tariff treatment.**

(a) *Verification.* A claim for preferential tariff treatment made under § 10.2003(b) or § 10.2011, 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 PANTPA 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 Panama, to review the records of the type referred to in § 10.2009(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.

**§ 10.2027 Special rule for verifications in Panama 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 Panama 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 an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise 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 enterprise subject to the verification if CBP determines that the enterprise 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 enterprise has provided incorrect information, to support the claim; and

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

(c) *Action 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 Panama, along with the competent authorities of Panama, to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from Panama to the United States.

(d) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny entry of textile or apparel goods produced or exported by the enterprise.

(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.

#### **§ 10.2028 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 35, HTSUS, and in §§ 10.2013 through 10.2025, the legal basis for the determination.

#### **§ 10.2029 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 PANTPA rules of origin set forth in General Note 35, HTSUS, CBP may suspend preferential tariff treatment under the PANTPA 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 35, HTSUS.

### **Penalties**

#### **§ 10.2030 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 PANTPA.

#### **§ 10.2031 Corrected claim or certification by importers.**

An importer who makes a corrected claim under § 10.2003(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.

#### **§ 10.2032 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 § 10.2009(b) with respect to the making of an incorrect certification.

**§ 10.2033 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**

#### **§ 10.2034 Goods re-entered after repair or alteration in Panama.**

(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 Panama as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Panama, 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, "repair or alteration" 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. The term "repair or alteration" does not include an operation or process that transforms an unfinished good into a finished good.

(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 Panama, are incomplete for their intended use and for which the processing operation performed in Panama 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 Panama 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; Pub. L. 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)(14) to read as follows:

**§ 24.23 Fees for processing merchandise.**

\* \* \* \* \*

(c) \* \* \*

(14) 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-Panama Trade Promotion Agreement Implementation Act (*see also* General Note 35, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after October 29, 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, the U.S.-Panama Trade Promotion Agreement, and the

U.S.-Colombia Trade Promotion Agreement are contained in Part 10, Subparts H, I, J, M, Q, R, S 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)(xvi) as (a)(2)(xvii) and adding a new paragraph (a)(2)(xvi) to read as follows:

**§ 163.1 Definitions.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(xvi) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Panama Trade Promotion Agreement (PANTPA), including a PANTPA 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. \* \* \*

**§ 10.2003–10.2007 PANTPA records that the importer may have in support of a PANTPA 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 “§§ 10.2003 and 10.2004” to the table in numerical order to read as follows:

**§ 178.2 Listing of OMB control numbers.**

19 CFR Section	Description	OMB Control No.
* * * * *		
§§ 10.2003 and 10.2004 ..	Claim for preferential tariff treatment under the US-Panama Trade Promotion Agreement.	1651-0117
* * * * *		

THOMAS S. WINKOWSKI,  
*Acting Commissioner.*

Dated: September 25, 2013.

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

[Published in the Federal Register, October 23, 2013 (78 FR 63052)]

**ACCREDITATION AND APPROVAL OF CAMIN CARGO CONTROL, INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of February 21, 2013.

**EFFECTIVE DATE:** The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on February 21, 2013. The next triennial inspection date will be scheduled for February 2016.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo

Control, Inc., 31 Fulton Street—Unit A, New Haven, CT 06513, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. [http://cbp.gov/linkhandler/cgov/trade/basic\\_trade/labs\\_scientific\\_svcs/commercial\\_gaugers/gaulist.ctt/gaulist.pdf](http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf).

Dated: September 30, 2013.

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

[Published in the Federal Register, October 22, 2013 (78 FR 62645)]

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**EXTENSION OF THE AIR CARGO ADVANCE SCREENING  
(ACAS) PILOT PROGRAM AND REOPENING OF  
APPLICATION PERIOD FOR PARTICIPATION**

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

**ACTION:** General notice.

**SUMMARY:** On October 24, 2012, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** that announced the formalization and expansion of the Air Cargo Advance Screening (ACAS) pilot program that would run for six months. On April 23, 2013, CBP published a notice in the **Federal Register** extending the pilot period for another six months. This document announces that CBP is extending the pilot period for an additional nine months and reopening the application period for new participants for 60 days. The ACAS pilot is a voluntary test in which participants submit a subset of required advance air cargo data to CBP at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States.

**DATES:** CBP is extending the ACAS pilot program through July 26, 2014, and reopening the application period to accept applications from new ACAS pilot participants through December 23, 2013. Comments concerning any aspect of the announced test may be submitted at any time during the test period.

**ADDRESSES:** Applications to participate in the ACAS pilot must be submitted via email to *CBPCCS@cbp.dhs.gov*. Written comments concerning program, policy, and technical issues may also be submitted via email to *CBPCCS@cbp.dhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** Regina Park, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at *regina.park@dhs.gov*.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

On October 24, 2012, CBP published a general notice in the **Federal Register** (77 FR 65006, corrected in 77 FR 65395<sup>1</sup>) announcing that CBP is formalizing and expanding the ACAS pilot to include other eligible participants in the air cargo environment. The notice provides a description of the ACAS pilot, sets forth eligibility requirements for participation, and invites public comments on any aspect of the test. In brief, the ACAS pilot revises the time frame for pilot participants to transmit a subset of mandatory advance electronic information for air cargo. CBP regulations implementing the Trade Act of 2002 specify the required data elements and the time frame for submitting them to CBP. Pursuant to 19 CFR 122.48a, the required advance information for air cargo must be submitted no later than the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations.

The ACAS pilot is a voluntary test in which participants agree to submit a subset of the required 19 CFR 122.48a data elements (ACAS data) at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. The ACAS data is used to target high-risk air cargo. CBP is considering possible amendments to the regulations regarding advance information for air cargo. The results of the ACAS pilot will help determine the relevant data elements, the time frame within which data must be submitted to permit CBP to effectively target, identify

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<sup>1</sup> This **Federal Register** notice, published on October 26, 2012, corrected the email address under the **ADDRESSES** heading for submitting applications or comments. The correct email address is *CBPCCS@cbp.dhs.gov*.

and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

### **Extension of the ACAS Pilot Period and Reopening of the Application Period**

The October 2012 notice announced that the ACAS pilot would run for six months. The notice provided that if CBP determined that the pilot period should be extended, CBP would publish another notice in the **Federal Register**. The October 2012 notice also stated that applications from new ACAS pilot participants would be accepted until November 23, 2012. On December 26, 2012, CBP published a notice in the **Federal Register** (77 FR 76064) reopening the application period for new participants until January 8, 2013. On January 3, 2013, the **Federal Register** published a correction (78 FR 315) stating that the correct date of the close of the reopened application period was January 10, 2013. On April 23, 2013, CBP published a notice in the **Federal Register** (78 FR 23946) extending the ACAS pilot period through October 26, 2013, and reopening the application period through May 23, 2013.

CBP continues to see an increase in the diversity and number of pilot participants representing a strong sample size of the air cargo community. However, CBP also continues to receive requests to participate in the pilot. In order to provide greater opportunity for a wide range of the air cargo community to participate in the ACAS pilot and to prepare for possible proposed regulatory changes, CBP is extending the ACAS pilot period through July 26, 2014, and reopening the application period through December 23, 2013.

Anyone interested in participating in the ACAS pilot should refer to the notice published in the **Federal Register** on October 24, 2012, for additional application information and eligibility requirements  
Dated: October 18, 2013.

SUSAN T. MITCHELL,  
*Acting Assistant Commissioner,  
Office of Field Operations.*

[Published in the Federal Register, October 23, 2013 (78 FR 63237)]

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

**AGENCY:** U.S. 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, 2013, 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 U.S. Customs and Border Protection personnel.

**EFFECTIVE DATE:** October 1, 2013.

**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 2013-16, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2013, and ending on December 31, 2013. 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, 2014, and ending March 31, 2014.

For the convenience of the importing public and U.S. 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	Under-payments (percent)	Over-payments (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	.....
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



Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1-1-99) (percent)
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
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 .....	123113	3	3	2

Dated: October 18, 2013.

THOMAS S. WINKOWSKI,  
*Acting Commissioner.*

[Published in the Federal Register, October 23, 2013 (78 FR 63238)]

**TEST METHOD FOR THE ADMINISTRATION OF  
ADDITIONAL U.S. NOTE 5 TO CHAPTER 64, HTSUS,  
CONCERNING THE CLASSIFICATION OF FOOTWEAR  
WITH TEXTILE MATERIAL ON THE OUTER SOLE**

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

**ACTION:** Final Notice of analysis for classification of footwear covered by Additional U.S. Note 5 to Chapter 64, Harmonized Tariff Schedule of the United States (“HTSUS”).

**SUMMARY:** This notice advises interested parties that U.S. Customs and Border Protection (“CBP”) has finalized its analysis for the administration of Additional U.S. Note 5 to Chapter 64, HTSUS

(“Note 5”). Notice of the proposed action was published in the *Customs Bulletin*, Vol. 47, No. 14, on March 27, 2013. Six (6) comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after [INSERT THE DATE OF PUBLICATION IN THE *Customs Bulletin* ].

**FOR FURTHER INFORMATION CONTACT:** Gregory Connor, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–0025.

### **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 U.S. Customs and Border Protection (“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.

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

Footwear is classified in Chapter 64, HTSUS. Note 4(b) to Chapter 64, HTSUS, which covers footwear, states as follows:

[T]he constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails protectors or similar attachments.

CBP has previously classified certain styles of footwear featuring outer soles of rubber or plastics to which textile material has been added under heading 6405, HTSUS, which provides for “[o]ther footwear”. See, e.g., Headquarters Rulings Letter (HQ) 964978, dated April 18, 2002, and HQ 965751, dated November 18, 2002.

Thereafter, the U.S. International Trade Commission (ITC) conducted an investigation pursuant to Section 1205(a) of the Omnibus Competitiveness Act of 1988 (19 U.S.C. §3005(a)) (Investigation No. 1205–8) in response to a request from the Department of the Treasury regarding certain footwear featuring outer soles of rubber or plastics to which a layer of textile material has been added. The request stated that changes to the HTS would promote the uniform application of the Harmonized Commodity Description and Coding System Convention as well as alleviate unnecessary administrative burdens.

Taking into consideration comments received during the course of its investigation, the ITC issued its final report on Investigation 1205–8 on February 18, 2011, with the layover requirements of Section 1206(b) being satisfied on June 30, 2011. Based on the results of the ITC final report, Presidential Proclamation 8742 was issued on October 31, 2011, wherein the President of the United States proclaimed the enactment of certain modifications to the HTSUS, including the insertion of Additional Note 5 to Chapter 64 (“Note 5”), set forth in Investigation No. 1205–8. Presidential Proclamation 8742 was published in the **Federal Register** (76 FR 68271) on November 3, 2011.

Note 5 states as follows:

For the purposes of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength.

Accordingly, Note 5 provides the authoritative legal standard to be used in determining the classification of footwear with textile material on the outer soles. Previous rulings issued on this issue have been superseded by Note 5. CBP has the responsibility of administering this new standard.

## DISCUSSION OF COMMENTS

After taking into consideration the comments made in response to a preliminary request for input on the CBP website, CBP advised interested parties by publication in the *Customs Bulletin*, Vol. 47, No. 14, on March 27, 2013, of its proposal to recognize International Organization for Standardization (ISO) 20871, entitled “Footwear – Test Methods for Outsoles – Abrasion Resistance”, in assessing the characteristics of textile material attached to outer soles. The protocol for ISO 20871 tests the performance of footwear outer soles by taking three (3) samples from the subject outer sole and subjecting their surface areas to the specified abrading machine for testing. The samples are weighed before and after subjecting them to the abrasion testing. Unlike the tests recommended to CBP in the preliminary comments, ISO 20871 is an abrasion resistance test intended for all outer soles irrespective of material, and thus permits the application of a single test to textile material added to all types of outer soles, not merely to rubber. Results of the test are generally expressed in terms of relative mass lost.<sup>1</sup>

CBP proposed to adapt the expression of results of the ISO 20871 test such that the determination of whether textile material possesses the characteristics normally required for use of an outer sole will be based on whether the textile material subjected to ISO 20871 remains present on the samples after testing. Employing the ISO 20871 test in this manner was judged to be an appropriate, practical, and efficient means to apply the standard established by Note 5 that would yield consistent results.

Six (6) commenters responded to the proposed notice. A description of the comments received, together with CBP’s responses, is set forth below.

### *Comment:*

Two commenters expressed the idea that a finding on whether certain textile material possesses the characteristics usually required for normal use of an outer sole should be based on commercial acceptability, thus nullifying the need to determine the strength and durability in the course of CBP’s administration of Note 5.

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<sup>1</sup> ISO 20880, entitled “Footwear – Performance requirements for components for footwear – Outsoles”, is a technical report that sets forth the acceptable performance standards for footwear subject to the ISO 20871 procedure. These performance standards consist of various figures of mass lost due to the ISO 20871 test and depend on the type of footwear being tested, ranging from general purpose sports footwear to infant footwear to fashion footwear.

*CBP Response:*

We do not agree that the fact that textile appears on the outer sole of footwear at the time of importation, which may be commercially acceptable equates to a determination of the durability and strength of that textile. Moreover, Note 5 provides CBP with specific directions in how to determine the constituent material of the outer sole under Note 4(b) to Chapter 64. Neither note takes into consideration consumer preference; accordingly, CBP will also not take into consideration the commercial acceptability of textile material when determining the constituent material of outer soles of imported footwear.

*Comment:*

One commenter hypothesized that textile material added to an outer sole would necessarily protect the outer sole from abrasion and wear as compared to outer soles with no textile material, and that a proper test would be to compare the results of a sample with textile material added with the results of a sample without textile material present.

*CBP Response:*

Inherent in the commenter's statement is the presumption that the textile material cannot be considered as the outer sole material. However, the focus of Note 5 is indeed to determine whether the textile material itself is to be taken into account when identifying the constituent material of the outer sole under Note 4(b) to Chapter 64. If the textile material does not possess the characteristics usually required for normal use of an outer sole, then the textile material is simply disregarded. The effect that the textile material may or may not have on the underlying material's resistance to abrasion is irrelevant for classification purposes at the heading level.

*Commenter:*

Remarking on the specification in ISO 20871 that the sample be subjected to the abrasion machine for eighty-four revolutions, one commenter opined that such a requirement does not relate to the "wearability" of the outer sole of the footwear. Moreover, the commenter notes that the proposed test does not take into account the "age, weight and use of the wearer".

*CBP Response:*

We note that the stated purpose of ISO 20871 is to determine the resistance to abrasion of footwear outer soles, irrespective of material. Accordingly, through its acceptance within the International

Standards Organization and by its use within the footwear industry for the same purpose, the procedure set forth in the test does, in fact, measure the “wearability” of outer soles. CBP agrees with the commenter that the procedure set forth in ISO 20871 does not take into account the “age, weight and use of the wearer” of a particular type of footwear. However, we nevertheless believe that the ISO 20871 as applied above represents a reasonable basis on which to determine the strength and durability of textile outer soles.

*Comment:*

Three commenters requested clarification or objected to CBP’s proposal to presume that footwear falling under the definition of “house slippers” in Statistical Note 1(d) to Chapter 64, HTSUS, satisfy the requirements of Note 5.

*CBP Response:*

CBP’s proposal not to subject “house slippers” to the proposed laboratory testing served as an acknowledgment, based on the feedback received during the preliminary comments, that the ISO 20871 procedure would not always be a useful tool in assessing whether textile material on outer soles of footwear worn exclusively indoors satisfy the terms of Note 5. After considering the comments, CBP agrees that the definition of “house slippers” set forth in Statistical Note 1(d) to Chapter 64, HTSUS, does not accurately capture the universe of so-called “indoor footwear”. For example, a slipper - in the commercial sense - that features a textile outer sole may not meet the definition of “house slipper” in Statistical Note 1(d) to Chapter 64, HTSUS. But the textile material on the outer soles of such footwear may possess the physical characteristics usually required for normal use of footwear worn exclusively indoors even if the textile material does not survive the ISO 20871 testing procedure. Accordingly, CBP withdraws the proposal to use Note 1(d) to Chapter 64, HTSUS, in this respect. While importers may always submit data from the ISO 20871 test to illustrate the physical characteristics of textile outer soles on footwear worn exclusively indoors, CBP will determine on a case-by-case basis whether testing is required to assess whether certain articles of footwear are considered “indoor footwear” and thus do not need to be subjected to testing for the purposes of Note 5.

*Comment:*

The vast majority of commenters requested that CBP clarify the interpretation of the results to ISO 20871. Specifically, it was noted that the procedure for ISO 20871 specified that three samples should

be taken from the subject outer sole, with results expressed as the average of the mass lost from the three samples. Because CBP proposed not to make use of average mass lost from the abrasion resistance test but merely as a determination of whether textile material was present after testing, the question arose of whether the textile material must be present on all of the samples or only one of the samples.

*CBP Response:*

If textile material is present on one of the three samples taken pursuant to the ISO 20871 procedure, all of the textile material on the outer sole of the subject footwear in contact with the ground will be deemed to possess the characteristics usually required for normal use of an outer sole. Therefore textile material may be present on only one of the three samples in order for the textile material to be determined to possess the characteristics usually required for normal use of an outer sole.

*Comment:*

One commenter questioned whether importers are obliged under the duty to exercise reasonable care to subject footwear to the ISO 20871 test where the importer has judged that the textile material on the outer sole does not possess the characteristics usually required for normal use of an outer sole and thus enters the merchandise under the proper provision under heading 6402, HTSUS, or 6404, HTSUS, that references textile material which is not taken into account under the terms of Note 5.

*CBP Response:*

CBP proposed to recognize the results of ISO 20871 in assessing the physical characteristics of textile materials attached to footwear outer soles. Accordingly, importers may subject footwear, including the footwear described by the commenter, to testing in the course of exercising reasonable care. If however, an importer judges that textile material added to an outer sole of rubber or plastics obviously does not possess the physical characteristics usually required for normal use of an outer sole, we do not believe that in the course of exercising reasonable care such importer would be obliged to conduct testing in order to justify entering the merchandise under a heading in Chapter 64 other than heading 6405, HTSUS. CBP nevertheless reserves the right to request that testing be conducted or by requesting a sample for testing by the CBP Office of Laboratory and

Scientific Services by issuing a CBP Form 28 to the importer, in any situation where deemed warranted.

*Comment:*

One commenter suggested that a superior alternative to using the ISO 20871 procedure from the proposal would be to recognize results from the “Martindale Abrasion Test”, which is described by the American Society for Testing and Materials (ASTM) 4966–10 procedure, and is used for upholstery fabric. The procedure requires samples to be cut from the outer soles of footwear (only for indoor shoes or house slippers, according to one of the commenters) and rubbed across an abrasive grit paper in a variable elliptical pattern for one thousand passes.

*CBP Response:*

In the proposal, CBP explained why using a derivative of the “Martindale Abrasion Test”, SATRA TM31a, to administer Note 5 was not appropriate, because the testing protocol carries inherent problems with repeatability between laboratories, and even amongst operators within the same laboratory. In our view, the lack of precision significantly limits the utility of SATRA TM31a for the purposes of administering Note 5. As the commenter correctly notes, the proposal did not directly address the possible application of the “Martindale Abrasion Test” (ASTM 4966–10) for assessing whether textile material possesses the physical characteristics usually required for normal use of an outer sole. In any event, in light of the fact that the test is designed to test the durability of upholstery fabric (and not outer soles of footwear) it is not a viable option for the purposes of administering Note 5.

*Comment:*

One commenter took the position that the proposal to consider textile material remaining after subsection to the ISO 20871 to possess the characteristics usually required for normal use of an outer sole was “wholly unrealistic and ignores the substance and clear direction of Additional U.S. Note 5.” The commenter went on to state that the proposed standard amounted to a requirement that the textile materials possess a modicum of durability and strength to be considered as a constituent material of the outer sole as opposed to the physical characteristics usually required for normal use of an outer sole. As an alternative, the commenter suggested that CBP incorporate a testing protocol whereby the mass loss figures under ISO 20871 are collected, with a mass loss within the range of twenty-



five percent to fifty percent constituting an appropriate and rational indicator of whether the textile material possesses the characteristics usually required for normal use of an outer sole.

*CBP Response:*

There are inherent problems in utilizing mass loss figures. For instance, the figures collected would not reflect only the mass of textile lost because subjecting footwear to the ISO 20871 protocol would produce mass loss from the textile material as well as the substrate material underlying the textile. Accordingly, even if CBP could form a rational basis for determining the correct mass loss figure that would signal when a textile material possesses the characteristics usually required for normal use of an outer sole, it would be impossible to ascertain whether this figure was reached in light of the fact that the mass loss figure would account for two materials as opposed to one. Consequently, CBP will proceed with determining that textile material possesses the characteristics usually required for normal use of an outer sole if it survives the ISO 20871 test.

*Comment:*

The same commenter from the previous comment also indicated that the ISO 20871 test, when applied to outer sole samples composed of multiple materials, may abrade the sample in such a way that the materials on the outer edge of the sample may not come into proper contact with the abrader. Therefore, the commenter suggested that it is necessary to make certain that the outer sole sample is fully in contact with the specified ISO 20871 abrading material throughout the test.

*CBP Response:*

CBP agrees with the commenter that the outer sole samples must be properly prepared and the testing conducted according to the specifications established in the ISO 20871 procedure. After consultation with CBP's Office of Laboratory and Scientific Services, we have confirmed that proper adherence to the testing procedures will limit to the extent possible the chances of improper exposure of the sample to the abrader as described by the commenter. However, as mentioned in the proposal, CBP reserves the right to request that testing be conducted or to request samples in order to conduct testing on its own. Such requests via a CBP Form 28 can be made for entries of footwear that have not been subjected to testing previously or to confirm the results of testing under the ISO20871 procedure conducted by the importer prior to importation.

*Comment:*

One commenter requested that CBP clarify whether footwear featuring outer soles composed predominantly or entirely of textile material that is not attached to a rubber or plastic substrate will be subjected to laboratory testing. The commenter also cited two examples of such footwear: bowling shoes and waders with felt outer soles.

*CBP Response:*

Without regard to the specific examples mentioned by the commenter, testing under the ISO 20871 procedure will not be regarded as necessary in cases where the textile material is the only material that can possibly be the constituent material of the outer sole (i.e. where the textile material in question is not added to substrate of a second material like rubber or plastic, as mentioned by the commenter).

*Comment:*

Two commenters expressed concern that if samples collected under the ISO 20871 testing procedure possessed shallow recesses or protrusions that are commonly featured on the patterns of footwear outer soles, then such features may prevent the abrader from coming into contact with textile, thus ensuring its survival during the testing. One commenter went on to request that CBP clarify that the samples taken for the purpose of testing under ISO 20871 be flat.

*CBP Response:*

First, CBP clarifies that the three samples taken for the purposes of laboratory testing under the ISO 20871 protocol must be taken from portions of the outer sole that come into contact with the ground within the meaning of Note 4(b) to Chapter 64. CBP has not determined the depth at which point recessed material is no longer “in contact with the ground”. Such a determination will be made on a case-by-case basis. Where it is determined that the material does not come in contact with the ground, the textile material will be disregarded. Furthermore, we note that in many cases, footwear features outer soles that are patterned in their entirety, thus making the collection of a flat sample impracticable.

*Comment:*

One commenter pointed out that the proposed test would always result in textile material being present if footwear manufacturers

incorporated textile material throughout the outer sole rather than only near the outer layer of the sole.

*CBP Response:*

A footwear manufacturer theoretically could ensure that the ISO 20871 test would result in textile material remaining on the sample if it produced footwear featuring outer soles with a sufficient amount of textile material incorporated throughout the outer sole material, rather than on the surface.

**ADMINISTRATION OF NOTE 5**

After considering the responses to the proposal, CBP has determined that ISO 20871 will be recognized in assessing the characteristics of textile material attached to outer soles, taking into consideration the above clarifications regarding the test's applicability and interpretation of its results.

Accordingly, in order to demonstrate that the terms of Note 5 have been met, either as part of a request for prospective ruling under the CBP regulations (19 CFR Part 177), in response to a request for information via CBP Form 28, or attached to entry documentation, importers should present independent laboratory reports applying ISO 20871, as described above. Similarly, CBP may conduct its own testing by applying ISO 20871 on footwear samples when circumstances warrant.

This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after the date of publication in the *Customs Bulletin*.

Dated: October 18, 2013

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

