

U.S. Customs and Border Protection



COMMERCIAL TRUCK SINGLE-CROSSING USER FEE AUTOMATION AND PREPAYMENT PILOT

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) intends to conduct a pilot test program pursuant to its authority under 19 CFR 101.9(a) to allow a new payment option for commercial truck single-crossing user fees. The CBP regulations specify the applicable user fee for commercial trucks upon arrival into the United States and the methods of payment, which include payment on an annual basis or on a per crossing basis. Although commercial truck carriers can electronically prepay the user fees on an annual basis, carriers who opt for the single-crossing user fee must pay the fee upon arrival at a U.S. port of entry. This pilot will enable the owner, agent, or person in charge of a commercial truck to prepay the single-crossing user fee online prior to arrival at a port of entry. This notice describes the pilot, its purpose, how it will be implemented, the duration of the pilot, and invites public comment on any aspect of the pilot. This pilot will not affect the annual commercial truck user fee payment option.

DATES: The pilot will begin at the Buffalo, Detroit and El Paso ports of entry starting on June 2, 2016. If it is determined that the pilot is working successfully at these initial ports, the pilot would be expanded to all U.S. land border ports of entry that process commercial trucks. The exact date of the expansion to all U.S. land border ports of entry would be announced on the CBP Web site, <http://www.cbp.gov>. The pilot will run for approximately one year. Comments concerning this notice and all aspects of the pilot may be submitted at any time during the pilot period.

ADDRESSES: Written comments concerning any aspect of the pilot should be submitted to James Pattan, Program Manager, Office of Field Operations, U.S. Customs and Border Protection, via

email at *James.Pattan@dhs.gov*. In the subject line of your email, please indicate “Comment on Commercial Truck Single-Crossing User Fee Pilot”.

FOR FURTHER INFORMATION CONTACT: James Pattan, Program Manager, Office of Field Operations, U.S. Customs and Border Protection, by telephone at (202) 344–2293 or by email at *James.Pattan@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Commercial Truck User Fees

CBP collects user fees to pay for the costs incurred in providing customs services. These user fees offset inspection costs that were previously funded solely by general taxpayer revenue. Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), § 13031, Public Law 99–272, 110 Stat. 82 (1986), codified at 19 U.S.C. 58c, CBP shall charge and collect certain processing fees for air and sea passengers, commercial trucks, rail cars, private vessels, dutiable mail packages, and Customs broker permits.

Sections 24.22(b)–(e) and (g) of the CBP implementing regulations (19 CFR 24.22(b)–(e) and (g)) provide that, under certain circumstances, user fees must be paid upon arrival into the United States of certain commercial vessels, barges, and other bulk carriers from Canada or Mexico; commercial trucks; railroad cars; certain private vessels or private aircraft; and passengers aboard commercial vessels and commercial aircraft.

Section 24.22(c) sets forth the regulations pertaining to the user fees for commercial trucks upon arrival into the United States. The total commercial truck user fee consists of an Animal and Plant Health Inspection Service/ Agricultural Quarantine Inspection (APHIS/AQI) fee collected on behalf of the U.S. Department of Agriculture and a CBP fee.¹ CBP collects the APHIS/AQI user fee and the CBP user fee together as one commercial truck user fee.

Current Payment Options

Section 24.22(c) provides commercial truck carriers with two alternatives to pay the required user fee. The commercial truck carrier may either prepay the fee for all arrivals of that truck during a

¹ The APHIS/AQI fee collected on behalf of the U.S. Department of Agriculture is authorized by 21 U.S.C. 136a. The APHIS/AQI fee amount is set forth in Section 354.3 of title 7 of the Code of Federal Regulations (7 CFR 354.3).

calendar year (annual commercial truck user fee)² or pay a per crossing fee each time the truck enters the United States (single-crossing user fee).

The owner, agent, or person in charge of the commercial truck can prepay the annual commercial truck user fee online through the Internet portal, “Decal and Transponder Online Procurement System (DTOPS)”,³ or by mail.⁴ After the annual user fee is paid, a transponder is issued, which is affixed to the vehicle’s windshield to reflect the prepayment.

Carriers that have not prepaid the annual commercial truck user fee are required to pay a per crossing fee each time the truck enters the United States. The user fee is collected when the truck arrives at the U.S. port of entry. The driver or other person in charge of the commercial truck is required to pay the user fee during primary processing or during referral to the administrative office.⁵ Payment may be by cash or credit card.

Commercial Truck Single-Crossing User Fee Automation and Prepayment Pilot

Purpose of the Pilot

The purpose of the pilot is to streamline the payment of the commercial truck single-crossing user fees by introducing a new payment option. Specifically, CBP is working towards the elimination of cash and credit card collections of the commercial truck single-crossing user fee during commercial truck primary processing by automating and allowing prepayment of the fee.

This will provide benefits to both CBP and to commercial truck carriers. Cash and credit card collection at the port of entry is a manual, burdensome, and time-consuming process. The automation and prepayment option for the single-crossing user fee will reduce wait times, improve primary processing, save costs to truck carriers associated with idling time (such as gas and lost driving hours), and alleviate CBP officers of the administrative functions pertaining to the collection, accounting and transmittal of user fee collections.

² For user fee collection purposes, a “transponder” is a plastic card which contains a chip that electronically transmits confirmation that applicable user fees for commercial trucks have been paid for the calendar year.

³ The DTOPS portal allows CBP to process user fee prepayment requests and accept electronic payments.

⁴ CBP Form 339C (Annual User Fee Decal Request—Commercial Vehicle).

⁵ The method of payment for the commercial truck single-crossing user fee is currently dependent on the logistics of the particular U.S. port of entry.

Description and Implementation of the Pilot

Currently, when a commercial truck arrives at a U.S. port of entry and the annual user fee has not been prepaid, the driver or other person in charge of the truck pays the single-crossing user fee upon arrival. This pilot provides an additional payment option that will allow the owner, agent, or person in charge of a commercial truck to prepay the single-crossing user fee online via the DTOPS portal prior to the truck arriving at a U.S. port of entry.⁶ This pilot will allow the owner, agent, or person in charge of a commercial truck to access the DTOPS portal via a desktop computer (<https://dtops.cbp.dhs.gov/>) or a smartphone app to pay the required single-crossing user fee before arriving at the U.S. port of entry. After accessing the DTOPS portal, the Vehicle Identification Number (VIN) must be registered and the required user fee paid by credit card for each truck that will transit the U.S. border. After payment is accepted, DTOPS will provide an electronic receipt that may be printed. When the commercial truck arrives at primary processing, the CBP officer will check the Automated Commercial Environment (ACE) system to ensure that the user fee was prepaid. If the user fee was not prepaid, the driver or other person in charge of the truck will be required to pay the fee at the port of entry using cash or a credit card.

Duration of the Pilot

The pilot will begin at the Buffalo, Detroit and El Paso land ports of entry starting on June 2, 2016. If it is determined that the pilot is working successfully at these initial ports, the pilot would be expanded to all U.S. land border ports of entry that process commercial trucks. The exact date of the expansion to all U.S. land border ports of entry would be announced on the CBP Web site, <http://www.cbp.gov>. The pilot will run for approximately one year. Any owner, agent, or person in charge of a commercial truck can participate in the pilot. No application is needed to participate in the pilot. When sufficient pilot analysis has been conducted, and the comments analyzed, CBP will then consider whether to begin rulemaking to add the single-crossing commercial truck user fee prepayment option to 19 CFR 24.22(c).

Privacy

CBP will ensure that all Privacy Act requirements and applicable policies are adhered to during the implementation of this pilot.

⁶ The prepayment of the annual commercial truck user fee is already automated via the DTOPS portal.

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The collections of information in this notice will be submitted for OMB approval 1651-0052 (User Fees).

Authorization for the Pilot

This pilot adds a payment option for commercial truck single-crossing user fees in addition to the payment method specified in 19 CFR 24.22(c). It is being conducted in accordance with § 101.9(a) of the CBP regulations (19 CFR 101.9(a)), which authorizes the Commissioner to impose requirements different from those specified in the CBP regulations for the purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise.

Dated: April 28, 2016.

R. GIL KERLIKOWSKIE,
Commissioner.

[Published in the Federal Register, May 3, 2016 (81 FR 26573)]



**ANNOUNCEMENT OF NATIONAL CUSTOMS AUTOMATION
PROGRAM (NCAP) TEST CONCERNING THE SUBMISSION
THROUGH THE AUTOMATED COMMERCIAL
ENVIRONMENT (ACE) OF CERTAIN IMPORT DATA AND
DOCUMENTS REQUIRED BY THE U.S. FISH AND
WILDLIFE SERVICE**

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP) plan, developed in consultation with the U.S. Fish and Wildlife Service (FWS), to conduct a National Customs Automation Program (NCAP) test concerning the electronic transmission of certain import data and documents for commodities regulated by FWS. Under this test, the data or documents will be transmitted electronically through CBP's Document Image System (DIS) or CBP's

Automated Broker Interface (ABI) system using the Partner Government Agency (PGA) Message Set, for processing in CBP's Automated Commercial Environment (ACE).

DATES: The FWS PGA Message Set test will begin no earlier than May 1, 2016. This test will continue until concluded by way of announcement in the **Federal Register**. Public comments are invited and will be accepted through the duration of the test pilot.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Josephine Baiamonte, ACE Business Office (ABO), Office of International Trade, at *josephine.baiamonte@cbp.dhs.gov*. In the subject line of your email, please indicate, "*Comment on FWS PGA Message Set Test FRN.*"

FOR FURTHER INFORMATION CONTACT: For PGA-related questions, contact Elizabeth McQueen at *elizabeth.mcqueen@cbp.dhs.gov*. For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov* with the subject heading "*PGA Message Set FWS Test FRN-Request to Participate.*" For FWS-related questions, contact Tamesha Woulard, Senior Wildlife Inspector, Office of Law Enforcement (Headquarters), U.S. Fish and Wildlife Service, at *Tamesha_Woulard@fws.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization ("Customs Modernization Act"), in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8. 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization has been on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor Electronic Data Interchange (EDI) system to the Automated Commercial System (ACS). ACE is an automated and electronic system for processing commercial trade data. ACE is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest.

The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. The Automated Broker Interface (ABI) is the EDI that enables members of the trade community to file electronically required import data with CBP and transfer that data to ACE.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section XV, entitled, "Development of ACE Prototypes." The procedures and criteria related to participation in the prior ACE test pilots remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

II. Authorization for the Test

The Customs Modernization Act provisions provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95-21, 60 FR 14211 (March 16, 1995).

III. International Trade Data System (ITDS) and ACE

This test is in furtherance of the International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006 ("SAFE Port Act") (Sec. 405, Pub. L. 109-347, 120 Stat. 1884, Oct. 13, 2006) (19 U.S.C. 1411(d)), to achieve the vision of ACE as the "single window" for the U.S. government and trade community. The purpose of ITDS, as stated in section 405 of the SAFE Port Act, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. CBP is developing ACE as the "single window" for the trade community to transmit electronically all required information related to the merchandise that is imported or exported and to comply with the ITDS requirement established by the SAFE Port Act. On October 13, 2015, CBP promulgated regulations providing that, as of November 1, 2015, ACE is a CBP authorized EDI system which may be used for the filing of entries and entry summaries. *See* 80 FR 61278 (October 13, 2015).

Executive Order 13659, *Streamlining the Export/Import Process for America's Businesses*, 79 FR 10657 (February 25, 2014), requires

that by December 31, 2016, ACE, as the ITDS “single window,” have the operational capabilities to serve as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export, and to transition from most paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, U.S. government agencies.

IV. Partner Government Agency (PGA) Message Set and Document Image System (DIS)

On December 13, 2013, CBP published in the **Federal Register** a notice announcing an NCAP test called the Partner Government Agency (PGA) Message Set test. *See* 78 FR 75931 (December 13, 2013). The PGA Message Set is the data needed to satisfy the PGA reporting requirements. ACE enables the message set by acting as the “single window” for the electronic transmission to CBP of trade-related data required by the PGAs. After validation, the data will be made available to the relevant PGAs involved in regulating the importation of the merchandise. The data will be used to fulfill merchandise entry requirements and may allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, the PGA Message Set will eliminate the necessity for the submission and subsequent handling of most paper documents.

On April 6, 2012, CBP announced the Document Image System (DIS) test (77 FR 20835) allowing any party who files an ACE entry/cargo release or ACE Entry Summary certified for cargo release to submit electronically digital copies of specified CBP and PGA forms and documents via a CBP-approved EDI (ABI). On October 15, 2015, CBP announced it would permit any DIS-eligible form or document to be submitted as an attachment to an email. *See* 80 FR 62082. As CBP frequently updates the list of forms and documents eligible to be transmitted using DIS, the complete list will be maintained on the CBP Web site, at the following address: <http://www.cbp.gov/trade/ace/features> under the DIS tab. Only eligible documents and forms required for the release of merchandise or requested by CBP should be transmitted using DIS. Forms and documents transmitted using DIS may be transmitted without a prior request from CBP or the relevant PGA. ACE will automatically acknowledge every successful DIS transmission. This automated acknowledgement of successful transmission does not mean the correct or required form or document was transmitted as it occurs prior to any review of the transmitted form or document. Any form or document submitted via DIS is an

electronic copy of an original document or form and both the original and the imaged copy are subject to the recordkeeping requirements of 19 CFR part 163 and any other applicable PGA recordkeeping requirements. Every form or document transmitted through DIS must be legible and must be a complete, accurate, and unaltered copy of the original document. For more information and the rules, procedures, technical requirements and terms and conditions applicable to the DIS, please *see* the DIS **Federal Register** notice at 80 FR 62082 (October 15, 2015).

V. The U.S. Fish and Wildlife Service PGA Message Set and DIS Test

The U.S. Fish and Wildlife Service (FWS) is authorized by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*), to regulate and collect information on the importation and exportation of wildlife. Under the applicable FWS regulations, the importation of wildlife and commodities containing wildlife into the customs territory of the United States typically requires the submission of a “Declaration for Importation or Exportation of Fish or Wildlife” (“Declaration”) (FWS Form 3–177), as well as any required original permits or certificates and copies of any other documents required under the FWS regulations (*see* 50 CFR part 14).

This notice announces CBP’s plan to conduct a test concerning the electronic transmission of the data contained in the Declaration to ACE using the PGA Message Set and the transmission of documents via DIS. FWS currently uses its own Internet-based filing system for the electronic submission of the Declaration and accompanying documents. This system is known as “eDecs.” Under this test, ACE will replace eDecs for those test participants filing entries under the auspices of this test. As part of the test, ACE will be used to receive the data contained in the Declaration using the PGA Message Set and DIS will be used for the accompanying documents. ACE will send the data and electronic documents to FWS for processing. Consequently, test participants must use ACE rather than eDecs to electronically transmit the data in the Declaration and any documents normally transmitted through eDecs.

This new FWS PGA Message Set and DIS capability will satisfy the FWS data and electronic document requirements for any CBP entry filed electronically in ACE, except original “Convention on International Trade in Endangered Species of Wild Fauna and Fauna” (“CITES”) and foreign-law paper documents, which will continue to be submitted directly to the FWS office at the applicable port. This new capability will also enable the trade community to have a CBP-managed “single window” for the submission of data and electronic

documents required by the FWS during the cargo importation and review process. The technical requirements for submitting FWS data elements are set forth in the supplemental Customs and Trade Automated Interface Requirements (CATAIR) guidelines for the FWS. These technical requirements, including the ACE CATAIR chapter, may be found at the following link: <http://www.cbp.gov/trade/ace/catair>.

The list of forms and documents, including FWS documents, which may be transmitted using DIS may be found at <http://www.cbp.gov/trade/ace/features> under the DIS tab. The FWS documents eligible to be transmitted using DIS include the documents associated with commodities regulated by FWS (e.g., invoices, packing lists, and bills of lading); commodity specific documents (i.e., health certificates, wildlife inventories, skin tag or tattoo lists, and caviar labeling information); transportation-related documents; and copies of other agency documents that are currently uploaded directly into eDecs.

For the test participants, this test will apply to all entries filed in ACE. Entries filed in ACE with the PGA Message Set must be transmitted using a software program that has completed ACE certification testing. This test will apply to all commodities and articles regulated by FWS that require a CBP entry for consumption. Test participants may not use this test for FWS-regulated commodities that do not require a CBP entry for consumption, such as goods admitted into a foreign trade zone or other areas of U.S. jurisdiction considered outside the customs territory of the United States for tariff and entry purposes; international mail; or articles in the possession of passengers arriving into the United States. Participants should continue to file directly with the FWS for such shipments of FWS-regulated commodities. This test applies to all modes of cargo transportation, and it is limited to the ports of entry where FWS-regulated commodities may be imported. A list of the ports that may be used to enter FWS-regulated commodities under this test may be found at the following link: <http://www.fws.gov/le/inspection-offices.html>. FWS port requirements still apply during this test, including the requirement for prior authorization to use a port other than a designated FWS port.

VI. Test Participant Responsibilities

Test participants will be required to:

(1) Transmit the Declaration data electronically to ACE, when filing an entry in ACE, using the PGA Message Set data procedures, at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States;

- (2) Refrain from filing the Declaration data or documents in eDecs when transmitting it to ACE;
- (3) Transmit required permits or documents using DIS;
- (4) Submit original CITES and foreign-law paper documents directly to the FWS office at the applicable port;
- (5) Use a software program that has completed ACE certification testing for the PGA Message Set; and
- (6) Take part in a CBP–FWS evaluation of this test.

VII. Waiver of Regulation Under the Test

For purposes of this test, those provisions of 19 CFR parts 10 and 12 that are inconsistent with the terms of this test are waived for test participants only. *See* 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”). This test also does not waive any FWS requirements under 50 CFR part 14.

VIII. Test Participation and Selection Criteria

To be eligible to apply for this test, the applicant must:

- (1) Be a self-filing importer who has the ability to file ACE entry/cargo release and ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE entry/ cargo release and ACE Entry Summaries certified for cargo release;
- (2) File Declarations for FWS-regulated commodities; and
- (3) Have an FWS eDecs filer account that contains the CBP filer code.

Test participants must meet all the eligibility criteria described in this document in order to participate in the test program.

IX. Application Process

Any party seeking to participate in the FWS PGA Message Set and DIS test should email its CBP Client Representative, ACE Business Office (ABO), Office of International Trade with the subject heading “Request to Participate in the FWS PGA Message Test.” Interested parties without an assigned client representative should submit an email message to Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov with the subject heading “PGA Message Set FWS Test FRN—Request to Participate.”

Email messages sent to the CBP client representative or Steven Zaccaro must include the applicant’s filer code; the commodities the applicant intends to import; and the intended ports of arrival. Client representatives will work with test participants to provide information regarding the transmission of this data.

CBP will begin to accept applications upon the date of publication of this notice and will continue to accept applications throughout the duration of the test. CBP will notify the selected applicants by an email message of their selection and the starting date of their participation. Selected participants may have different starting dates. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified by an email message and given the opportunity to resubmit its application. There is no limit on the number of participants.

X. Test Duration

The initial phase of the pilot test will begin no earlier than May 1, 2016. At the conclusion of the test pilot, an evaluation will be conducted to assess the effect that the FWS PGA Message Set has on expediting the submission of FWS importation-related data elements and the processing of FWS-related entries. The final results of the evaluation will be published in the **Federal Register** and the *Customs Bulletin* as required by § 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)). Any modification of this test or future expansion of ACE will be announced via a separate **Federal Register** notice.

XI. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

XII. Paperwork Reduction Act

The collection of information contained in this FWS PGA Message Set test has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB control number 1018-0012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

XIII. Confidentiality

All data submitted and entered into ACE may be subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential by CBP, except to the extent as otherwise provided by law. The Electronic Export Information (EEI) is also subject to the confidentiality provisions of 15 CFR 30.60. As stated in previous notices, participation in these or any of the previous ACE tests is not confidential and

upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

XIV. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in this test for any of the following:

- (1) Failure to follow the terms and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations;
- (3) Failure to abide by applicable laws and regulations that have not been waived; or
- (4) Failure to deposit duties or fees in a timely manner.

If the Director, Business Transformation, ACE Business Office (ABO), Office of International Trade, finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within ten (10) calendar days of receipt of the written notice. The appeal must be submitted to Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*.

The Executive Director will issue a decision in writing on the proposed action within thirty (30) working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In instances of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within ten (10) calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to Executive Director, ABO, Office of International Trade, by emailing

Deborah.Augustin@cbp.dhs.gov. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within fifteen (15) working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

XV. Developments of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).

- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- ACE Export Manifest for Vessel Cargo Test: 80 FR 50644 (August 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- ACE Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).
- Automated Commercial Environment (ACE) Fillings for Electronic Entry/Entry Summary (Cargo Release and Related Entry): 80 FR 61278 (October 13, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release Test for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Portal Account Test to Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Customs Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment

(ACE) Partner Government Agency (PGA) Message Set Regarding the Toxic Substances Control Act (TSCA) Certification Required by the Environmental Protection Agency (EPA): 81 FR 7133 (February 10, 2016).

- Modification of the National Customs Automation Program (NCAP); Test Concerning the Partner Government Agency Message Set for Certain Data Required by the Environmental Protection Agency (EPA): 81 FR 13399 (March 14, 2016).

Dated: April 29, 2016.

CYNTHIA F. WHITTENBURG,
*Acting Deputy Executive Assistant
Commissioner,
Office of Trade.*

[Published in the Federal Register, May 5, 2016 (81 FR 27149)]



RECEIPT OF APPLICATION FOR “LEVER-RULE” PROTECTION

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

ACTION: Notice of receipt of application for “Lever-Rule” protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Intel Corporation (“Intel”) seeking “Lever-Rule” protection for the federally registered and recorded “Design Only (Swirl Design)” trademark.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Intellectual Property Rights Branch, Regulations & Rulings, (202) 325-0036.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Intel seeking “Lever-Rule” protection. Protection is sought against importations of integrated circuit chips, semiconductors, microchips and printed circuit boards, intended for sale in countries outside the United States that bear the “Design Only (Swirl Design)” mark, U.S. Trademark Registration No. 3,779,566/ CBP Recordation No. TMK 15-00132. In the event that CBP determines that the electronic parts under consideration are physically and materially different from the Intel components autho-

rized for sale in the United States, CBP will publish a notice in the Customs Bulletin, pursuant to 19 CFR 133.2 (f), indicating that the above-referenced trademarks are entitled to “Lever-Rule” protection with respect to those physically and materially different Intel electronic parts.

CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch
Regulations and Rulings,
Office of International Trade

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO PHYSICAL VACUUM
DEPOSITION PROCESS AS A “USE” FOR PURPOSES OF
SAME CONDITION DRAWBACK**

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to a vacuum deposition process as a “use” for purpose of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking the following Headquarters Ruling Letter relating to a physical vacuum deposition process (PVD) as a “use” for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1): H170624, dated August 3, 2012. This notice also advises interested parties that CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on January 20, 2016. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Gail Kan, Entry Process and Duty Refunds Branch: (202) 325–0346.

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625 (c)(2)), a notice was published in the *Customs Bulletin* on January 20, 2016, proposing to revoke Headquarters Ruling Letter H170624, dated August 3, 2012, pertaining to a physical vacuum deposition process as a “use” for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1). The notice also proposed to revoke any treatment previously accorded by CBP to substantially identical transactions. No comments were received in response to the notice.

Accordingly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking Headquarters Ruling Letter H170624, dated August 3, 2012, and any treatment previously accorded by CBP to substantially identical transactions in order to reflect the proper determination that the described PVD process on chromed brass plumbing fixtures did not qualify as a “use” for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1). *See* attached.

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

Dated: March 28, 2016

CARRIE L. OWENS
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

March 28, 2016
OT:RR:CTF:ER
H237075 ASL

JOHN M. PETERSON
NEVILLE PETERSON LLP
17 STATE ST. 19TH FLOOR
NEW YORK, NY 10004

RE: Grohe Canada Inc.: Reconsideration of Headquarters Ruling Letter H170624

DEAR MR. PETERSON,

This is in reference to Headquarters Ruling Letter H170624, issued on August 3, 2012, with regard to a request for a prospective ruling concerning whether a physical vacuum deposition process (“PVD”) is a “use” for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1). Upon review, we have determined that the PVD process is not a “use” for purposes of 19 U.S.C. § 1313(j) drawback. Therefore, for the reasons set forth below, we are revoking the treatment previously accorded by Customs and Border Protection (“CBP”) to substantially identical transactions.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published in the Customs Bulletin on January 20, 2016. No comments were received in response to the notice.

FACTS:

At issue in this reconsideration is a request for a prospective ruling concerning whether a PVD process is a “use” for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1). Grohe Canada, Inc. (“Grohe”) imports various types of plumbing fixtures into the United States. Grohe stated for the first time in its reconsideration letter that the merchandise is imported already finished, chromed, and read for final assembly or sale. In the United States, the items are then “coated to achieve a different type of finish,” a PVD process. According to Grohe, the PVD process is as follows:

Brass, zinc or ABS plumbing components are loaded onto coating racks, [a.k.a.] pylons and the pylons are then placed into cleaning baskets. The baskets with pylons are passed through an automated cleaning system consisting of 9 tanks, three of which are strong soaps specially made to remove contaminants, e.g. grease, dirt etc. from the surface of components without damaging the component’s surface. The remaining 6 tanks are rinsing tanks with high purity water used to rinse off the soaps from the components.

The wetted pylons are then passed through two drying stations to dry off the remaining water from the cleaning process. The dried pylons are then placed onto batch fixtures, [a.k.a.] coating tables and placed inside heating ovens. The parts are then heated to a specific temperature to prepare the component surface for coating and “outgas” (remove remaining water left on part, if any). After the parts have been heated, they are removed from the oven and placed inside the PVD coating chamber. With the use

of vacuum pumps, the air inside the chamber is evacuated and a vacuum is created in the chamber. The removal of air from the chamber assures that no contaminants present in the chamber atmosphere will mix with the coating to be deposited onto the components' surfaces.

After a specific vacuum level (atmosphere) is reached inside the chamber, the coating tables start to rotate. An inert gas, argon, is then introduced into the chamber to create a plasma (ionized atmosphere) used in the process to create the right conditions to start coating the components. After the plasma is created in the chamber, an arc spot is created on the surface of a target (e.g. high purity chromium, zirconium or titanium metal slabs) facing the components. The arc spot is a low voltage-high current arc similar to a welding arc; it creates a localized area on the surface of the target reaching temperatures of 2000 – 4000 °C which rapidly melts the metal and creates a metallic vapor. The arc is then moved very fast around the target by using a magnetic field (arc steering) to evenly evaporate the metal and create an even metallic vapor throughout the chamber.

While the arc is moved around the target evaporating the metal, ultra high purity (UHP) gases are introduced into the chamber, e.g. Nitrogen and Acetylene, which combine(s) with the evaporated metal on the surface of the components creating a ceramic nitride or ceramic carbo-nitride coating. The majority of the evaporated metals, mostly positively charged ions, e.g. Cr^{+2+} , Ti^{+} , combine with the gases on the surface of the components. Due to the application of a bias (negatively charged) voltage to the components' surfaces. The bias voltage makes the components' surfaces negatively charge; thus the negative surface attracts the positively charged metallic ions which combine with the UHP gases in the chamber at the components' surfaces.

In its original submission, Grohe explained that this process creates a “ceramic (carbo) nitride coating deposited on the components' surfaces” and “depending on the composition, can increase the corrosion and erosion resistance of the component or other properties specifically required for the component. In the plumbing industry, the application of PVD coatings is mostly used to create a coating which is scratch resistant, and due to the stable nature of the ceramic (carbo) nitrides provides a consistent and lasting color which outlasts other coating processes in the market.”

In an email dated October 5, 2011, Grohe stated that without the application of the “finish” the products would operate in the same manner and the only difference between the pre-finish and post-finished item would be that the former would have a dull finish and the latter a shiny finish. However, what is described is less a “finish,” but more of a coating. After the PVD coating is applied, the plumbing fixtures are assigned a different part number and then exported back to a Grohe warehouse in Canada. Grohe provided documents of a typical transaction, which include a CF 7501, entry summary, a *pro forma* invoice for the imported brass, an invoice of the brass after the coating was applied, and Canadian entry documentation.

On August 3, 2012, we issued Headquarters Ruling Letter H1270624, in which we found that the application of a PVD “finish” on brass plumbing

fixtures constituted a “use” for purpose of 19 U.S.C. § 1313(j)(1) drawback. On December 21, 2012, Grohe filed a request for reconsideration of H1270624, stating that CBP drew incorrect conclusions in its ruling. Notably, Grohe clarified the PVD process and the fact that the brass plumbing fixtures have already underwent an electroplating process that coated the brass with a chrome plating before entry. This chrome plating makes the plumbing fixtures scratch resistant and anti-corrosive.

ISSUE:

1. Does the application of a PVD coating on brass plumbing fixtures constitute a “use” for purposes of 19 U.S.C. § 1313(j)(1)?
2. Is the merchandise in the “same condition” after the application of a PVD coating for purposes of 19 C.F.R. § 181.45?

LAW AND ANALYSIS:

Under 19 U.S.C. § 1313(j)(1), drawback is authorized if imported merchandise, on which was paid any duty, tax, or fee imposed under federal law upon entry, is, within three years of the date of importation, exported or destroyed under CBP supervision and was *not used* in the United States before such exportation or destruction. In addition, the drawback statute, under 19 U.S.C. § 1313(j)(3), describes the type of processing operations that represent incidental operations that are not considered “uses” and, therefore, do not disqualify drawback claims under section 1313(j). Section 1313(j)(3) provides:

The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on –

(A) the imported merchandise itself in cases to which paragraph (1) applies...

shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

CBP’s regulations provide further guidance on what constitutes “a use” by defining a “manufacture or production.” In 19 C.F.R. § 191.2(q), CBP defines a “manufacture or production” for drawback purposes as follows:

- (1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive “name, character or use”; or
- (2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

In particular, the definitions in section 191.2(q) reflect the holding in Customs Service Decision (“C.S.D.”) 82–67. C.S.D. 82–67, 16 Cust. B. & Dec. 800 (Dec. 22, 1981). In that decision, Customs considered whether certain operations performed on imported cotton towels constituted a manufacture or production for purposes of manufacturing drawback. Those operations included the weighing, inspecting, trimming, folding, spraying, and wrapping

the towels in polyethylene film for use by airline passengers. In the analysis, the decision discusses the judicial test established by the Supreme Court in *Anheuser-Busch v. U.S.*, 207 U.S. 556, 562 (1907). In that case, the Court held:

Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor and manipulation. But something more is necessary There must be transformation; a new and different article must emerge, "having a different name, character, or use."

In addition, regarding the second test for "use" in 19 C.F.R. § 191.2(q)(2), the holding in C.S.D. 82-67 adopted the "fit for a particular use" standard established by the former Court of Customs and Patent Appeals in *United States v. International Paint Co., Inc.*, 35 C.C.P.A. 87 (1948). The decision states:

The latter decision [in *International Paint*] appears to support Customs more recent interpretation of "manufacture" as a process brought about by significant investment of capital and labor to produce articles or commodities which, despite the fact they are in some cases much the same as their conditions prior to processing, have been made suitable for a particular intended use. In determining what constitutes a manufacture, we have held in our administrative rulings that if an operation involves special treatment of merchandise to obtain certain properties required for a specific use by the entity performing the operation or his customers and the operation involves significant capital and labor expenditure, then that operation is a manufacture or production.

Consistent with that decision, in HQ 153066, dated May 31, 2012, CBP stated that "in determining whether there is a manufacture it is important to examine whether the merchandise has been made fit for a particular use." Therefore, if the application of a coating on the brass fixtures was done in order to obtain certain properties required for a specific use by the entity performing the operation, or a new and different article having a distinctive name, character or use emerges, then the articles were *used* and not eligible for drawback under 1313(j)(1).

The application of a coating is not listed as one of the operations within 19 U.S.C. § 1313(j)(3) or the regulations that will not be treated as a "use" of that merchandise. However, in HQ 225985, dated November 30, 1995, CBP concluded that the listed operations in 19 U.S.C. § 1313(j)(3) do not impose a limitation on the qualifying operations, but are illustrative of operations that do not amount to a manufacture or production.

In this case, despite the significant capital and labor expenditure, the operations you listed would not constitute a manufacture or production within the meaning of 19 C.F.R. § 191.2(q). In your recent submission you clarified that the plumbing fixtures, while brass, have already undergone an electroplating process before entry, by which the brass was chrome plated. This chrome plating makes the plumbing fixtures scratch resistant and anti-corrosive, while the chrome plated surface makes the PVD process work better. In the PVD process, the brass fixtures are placed in a vacuum and a metallic target (titanium, zirconium, or chromium) is exposed to a low voltage-high current arc that vaporizes and ionizes the metal. High purity gases are then introduced into the vacuum and the metallic ions react with

the gases on the surface of the merchandise, concurrently bonding to it, and creating a new surface on the plumbing fixtures. Based on CBP's lab research and analysis, this surface is more anti-corrosive, scratch resistant, and harder than the chrome plated surface. It also has the effect of changing the color of the plumbing fixtures. However, the imported plumbing fixtures are not transformed into a new and different product. As noted in *Anheuser-Busch*, “[t]here must be a transformation; a new and different article must emerge, having a different name, character, or use.” *Anheuser-Busch*, 207 U.S. at 562. Here, the merchandise is imported as plumbing fixtures and exported as plumbing fixtures. Their names did not change and moreover, neither their character nor use has changed, as they operate in the same manner as they would without the PVD processing. Consequently, we find that the PVD process as performed in this instance and on these plumbing fixtures in the United States, did not make the fixtures into a new and different article having a distinctive “name, character or use” within the meaning of 19 C.F.R. § 191.2(q)(1).

Furthermore, in *International Paint*, the court found that “if an operation performs the function of fitting a substance for a use for which otherwise it is wholly unfitted, it falls within the letter and the spirit of the term manufactured ...” 35 C.C.P.A. at 94. In this case, upon importation of the chromed plumbing fixtures, they are commercially viable and could be sold as plumbing fixtures. While Grohe's subsequent PVD coating operation changes the color, and improves the corrosive and scratch resistance of the merchandise, it does not “perform the function of fitting” the merchandise for a use that was “originally wholly unfit[...].” *Id.* The plumbing fixtures are able to function in the same manner prior to the PVD coating process, as they were already corrosive and scratch resistant as a result of undergoing an electroplating process prior to entry, and in fact are also sold with just the basic chrome plating and with no additional PVD processing. The PVD process is intended to make the plumbing fixtures more desirable to consumers by offering them different color styles, and is not to make the fixtures fit for a particular use. Consequently, we find that the PVD process as performed in this instance and on these plumbing fixtures in the United States, did not make the fixtures fit for a particular use within the meaning of 19 C.F.R. § 191.2(q)(2). Therefore, we conclude that this operation does not constitute a manufacture or production, and thus is not a “use” under 19 U.S.C. § 1313(j)(3).

Since the merchandise is exported to Canada, the transactions are subject to the North American Free Trade Agreement (“NAFTA”) provisions. Section 203 of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2057, 2086; 19 U.S.C. § 3333), provides for the treatment of goods subject to the limitations of NAFTA drawback. Pursuant to 19 U.S.C. § 3333(a) (Section 203(a) of the NAFTA), goods “subject to NAFTA drawback” means any goods other than, among other things:

(2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph –

(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good[.] . . .

Therefore, in addition to goods being “unused” per 19 U.S.C. §1313(j)(1), the goods must also be in the “same condition” upon export as they were on import in order not to be subject to the limitations of NAFTA drawback. CBP regulations issued pursuant to the Act provide guidance for implementing the requirement that the imported and exported merchandise be in the “same condition.” Under 19 C.F.R. § 181.45(b), the term “same condition” is defined in 19 C.F.R. § 181.45(b)(1) as follows:

For purposes of this subpart, a reference to a good in the “same condition” includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

- (i) Mere dilution with water or another substance;
- (ii) Cleaning, including removal of rust, grease, paint or other coatings;
- (iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;
- (iv) Trimming, filing, slitting, or cutting;
- (v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or
- (vi) Testing, marking, labeling, sorting or grading.

19 C.F.R. § 181.45(b)(1). In HQ 228961, dated Jan. 23, 2002, we stated that the list in 19 C.F.R. § 181.45(b)(1) was not exhaustive and that the analysis should focus on whether the item in question is in the “same condition,” which includes the absence of “material alterations to the characteristics of the good” regardless of the processes to which the item was subjected.

CBP has previously considered whether certain operations materially alter the characteristics of a good for purposes of section 181.45(b)(1). In HQ 230166, dated January 29, 2004, CBP determined that repackaging dried fruits and dried vegetables from industrial-sized bulk packages to smaller packages did not constitute a material alteration. However, HQ 231066 determined that the adding of a desiccant (i.e., silicon dioxide) to dried fruits and vegetables to prevent powdered food from clumping did materially alter the imported merchandise. This increase in pourability was a material alteration of the character of the imported powder resulting in a product that was not in the same condition as the imported product, and therefore not within the scope of 19 C.F.R. § 181.45(b). Therefore, whether an operation materially alters the characteristics of a good is a determination driven by the facts.

Most relevant to the case here, is HQ 225874, dated March 22, 1996, where CBP determined that the painting of John Deere parts with John Deere identifying colors was an operation of greater magnitude than those listed in section 181.45(b)(1). In HQ 225874, we noted that it was:

[S]ignificant that “painting” itself is not included in this list. We consider painting to be an operation of greater magnitude than the operations stated in 19 CFR 181.45(b)(1)(iii). Painting is more than the application of a preservative, including lubricants, protective encapsulation, or preservation paint. We believe that if painting were intended to be within the scope of 19 CFR 181.45(b)(1), it would have been clear from the language of 19 CFR 181.45(b)(1). This is not the case. [...] Accordingly, because the

parts are not exported in the same condition as they were imported, they are not eligible for drawback pursuant to 19 CFR 181.45(b).

Here, the PVD process is expensive and labor intensive, much more so than the simple painting described in HQ 225874. The PVD process, which imparts a coating that not only changes the fixtures' color, but also makes them more scratch and corrosive resistant, as well as harder, is a more significant process than simply painting. Thus, we find that the PVD process is an operation of greater magnitude than the operations stated in 19 C.F.R. 181.45(b)(1)(iii). As a result, the brass fixtures are not in the "same condition" as when they were imported and are subject to the limitations of NAFTA drawback.

HOLDING:

Upon reconsideration, we find that the application of a PVD coating on chromed brass plumbing fixtures does not constitute a "use" for purposes of 19 U.S.C. § 1313(j). However, we find that the merchandise is not exported in the "same condition" and is subject to NAFTA limitations on drawback. We have reached this conclusion based on the very specific set of facts presented. As a result, Headquarters Ruling Letter H170624, dated August 3, 2012, is hereby revoked.

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

Sincerely,

CARRIE L. OWENS

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE REQUIREMENT THAT AN ORIGINAL INVOICE
REFLECTING THE TRANSACTION UNDER WHICH
MERCHANDISE ACTUALLY BEGAN ITS JOURNEY TO THE
UNITED STATES BE PROVIDED FOR MERCHANDISE
ENTERED AT MULTIPLE PORTS**

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the requirement that an original invoice reflecting the transaction under which merchandise actually began its journey to the United States be provided for merchandise entered at multiple ports.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modern-

ization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify Headquarters Ruling Letter H109795, dated May 22, 2012, relating to the requirement that an original invoice reflecting the transaction under which merchandise actually began its journey to the United States be provided for merchandise entered at multiple ports. CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before June 17, 2016.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, NE, 10th Floor, Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 90 K Street, NE, Washington, D.C. 20002 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Gail Kan, Entry Process and Duty Refunds Branch: (202) 325–0346.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information neces-

sary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the requirement that an original invoice reflecting the transaction under which merchandise actually began its journey to the United States be provided for merchandise entered at multiple ports. Although in this notice CBP is specifically referring to Headquarters Ruling Letter H109795 (Attachment A), dated May 22, 2012, this notice covers any rulings on this scenario that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the scenario subject to this notice should advise CBP during this notice period.

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

In Headquarters Ruling Letter H109795, CBP determined that an importer of record must provide the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States for each subsequent entry of the merchandise at different ports. Pursuant to 19 U.S.C. § 1625(c)(1), CBP proposes to modify Headquarters Ruling Letter H109795, and modify any other ruling not specifically identified, in order to reflect the proper determination that the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States is only required when merchandise transits from the port of exportation and is entered at the first port of entry. *See* Attachment B, proposed Headquarters Ruling Letter H230176. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 28, 2016

CARRIE L. OWENS
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

H109795

May 22, 2012

ENT-1-01OT:RR:CTF:ER GKG

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
109 SHILOH DRIVE
LAREDO, TX 78045
ATTN: MS. SAN JUANITA JUAREZ

RE: Internal advice regarding the completion of CBP Form 7501 and Manufacturer I.D.

DEAR PORT DIRECTOR:

This is in response to your June 10, 2010, request for internal advice regarding the proper method of generating Manufacturer Identification Codes (“MID”) when completing Customs and Border Protection’s (“CBP”) Form 7501, i.e., the entry summary.

FACTS:

In your internal request inquiry, you seek guidance with regard to two transactions involving Fairn & Swanson, Inc. (“F&S”) and its subsidiary, Fairn & Swanson, Inc. d/b/a Baja Duty Free (“Baja Duty Free”). F&S operates a foreign trade zone (“FTZ”) in Oakland, California. Imported alcohol is admitted into the FTZ under zone-restricted status by F&S and sold to Baja Duty Free. The alcohol is subsequently withdrawn from the FTZ and entered by Baja Duty Free into its class 9 bonded warehouses, or duty-free stores, for sale and exportation.

To illustrate the transactions you provided two representative warehouse entry summary packages filed by Baja Duty Free. The two warehouse entry summary packages illustrate identical issues raised in your internal advice inquiry. Therefore, we will only discuss one warehouse entry summary package, for entry xxxx664-0 filed on September 11, 2008, in detail as we address your questions. The entry summary package for entry xxxx664-0 includes the following documents: 1) the warehouse entry summary on CBP Form 7501; 2) a *pro forma* invoice for the purchase of alcohol by F&S from a U.S. company that distributes foreign alcohol (“domestic distributor”); 3) a Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit, on CBP Form 7512, documenting the movement of the alcohol from the Port of Miami to the FTZ (“First CF 7512”); 4) an Application for Foreign-Trade Zone Admission and/or Status Designation, on CBP Form 214, documenting the admittance of the alcohol into the FTZ under zone-restricted status; 5) a sales invoice between F&S and Baja Duty Free; 6) a second CBP Form 7512 (“Second CF 7512”) documenting the movement of alcohol from the FTZ to Baja Duty Free’s duty-free store located on Grand Central Boulevard, Laredo, Texas; 7) a Blanket Permit Summary for the withdrawal of alcohol from the Grand Central Boulevard duty-free store; and 8) a Record of Bonded Warehouse Activity documenting inventory movement at the Grand Central Boulevard duty-free store.

The warehouse entry summary on CBP Form 7501 is filed by Baja Duty Free. On the entry summary, the bill of lading or air waybill number is

blank.¹ However, the foreign port of lading for the alcohol at issue is specified as 42737, which correlates to Le Havre, France, and the export date is April 23, 2008. Moreover, Miami, Florida is listed as the U.S. port of unloading and the import date is May 4, 2008. Finally, the country of origin for the alcohol is listed as “FR” for France and the importing carrier is identified with the zone admission number found on the Application for Foreign-Trade Zone Admission and/or Status Designation (“CF 214”).

The First CF 7512, indicates that the first U.S. port of unloading for the alcohol at issue is Miami. Upon arrival in Miami, the alcohol entered into a bonded warehouse located at the port and operated by Schenker, Inc. The original entry summary for the Miami warehouse entry was not included as a part of the document submission. However, a review of CBP’s records associated with the Miami warehouse entry shows that the domestic distributor is listed as the importer of record and the date of importation is May 4, 2008. No invoices associated with the Miami warehouse entry or bills of lading associated with the importation of the alcohol are available for review.

Moreover, the First CF 7512 does not identify a country of origin or foreign port of lading for the alcohol; however, the document states that multiple vessels under U.S. flags were used to import the alcohol. Rather, the missing information is available on the CF 214. Specifically, the CF 214 states that the foreign port of lading for the alcohol is Le Havre, France and that the country of origin is also France. The exportation date is stated as April 23, 2008.

Based on the *pro forma* invoice, the sale of alcohol by the domestic distributor to F&S occurred on or about July 9, 2008, the order date, which is approximately two months after the alcohol’s date of importation into U.S. customs territory. The *pro forma* invoice contains only the addresses for F&S and the domestic distributor. It does not provide any details regarding the foreign manufacturer or shipper of the alcohol. The delivery address on the *pro forma* invoice is F&S’ Oakland, California FTZ. According to the CF 214 and the First CF 7512, the alcohol arrived at the FTZ from the Port of Miami on August 1, 2008.

The Second CF 7512 dated September 2, 2008, documents the transfer of alcohol from the FTZ to Baja Duty Free’s Grand Central Boulevard duty-free store in Laredo, Texas. According to the Second CF 7512, the alcohol is entered or imported by F&S. In addition, the Second CF 7512 also states that that the alcohol originated and was shipped from France on April 23, 2008, by means of a “domestic” carrier. The second invoice, dated September 5, 2008, is the sales invoice between F&S and Baja Duty Free for the alcohol transferred from the FTZ. Like the *pro forma* invoice, the sales invoice between F&S and Baja Duty Free does not provide any information with regards to the foreign manufacturer or shipper of the alcohol.

Based on the above facts, your office is requesting internal advice on the questions listed below. You ask:

¹ Please note that the Instructions for Preparation of CF 7501 in effect when entry xxxx664-0 was filed require the recording of the number assigned on the manifest by the international ocean or air carrier delivering the goods to the United States in the “B L or AWB No.” field. Completion of this field is only optional if the mode of transport is not by sea or air. Based on the facts presented, it appears that the imported alcohol at issue was shipped by a US flagged vessel from Le Havre, France to the Port of Miami. Therefore, a bill of lading number should be recorded on Baja Duty Free’s warehouse entry summary.

1. Can an invoice be presented without the foreign manufacturer or seller listed on the invoice?
2. Can Fairn & Swanson, Inc. be considered the shipper of the goods on the invoice because it sent merchandise to supply its duty-free store?
3. Can CBP request that a warehouse entry summary be required to have a MID constructed on a CBP Form 7501 using the foreign manufacturer or shipper instead of the U.S. Company who owns the merchandise?
4. Do the MID instructions on the 1990 memorandum provided with the internal advice request apply to warehouse entries that are entering the commerce of the United States from an FTZ?

ISSUES:

1. Whether the invoice accompanying the warehouse entry must include the name and address of the foreign manufacturer or shipper.
2. Whether the (MID) must be based upon the foreign manufacturer or shipper.

LAW AND ANALYSIS:

In your internal advice, you list four specific questions for this office to address. These questions address what information is required on the invoices submitted as a part of Baja Duty Free's warehouse entry summary and how to generate MID's for these entries. To respond to your questions, applicable laws and regulations require that the name and address of foreign manufacturers or shippers must be included on invoices submitted as a part of warehouse entries. Moreover, MID's for warehouse entries must be generated using the foreign manufacturers' or shippers' name and address.

1. Whether the invoice accompanying the warehouse entry must include the name and address of the foreign manufacturer or shipper.

The invoice accompanying the warehouse entry must include the name and address of the foreign manufacturer or shipper. When making a warehouse entry from an FTZ, 19 C.F.R. § 146.62(a) requires the individual with the right to make entry, or a properly appointed customs broker, to file CBP Form 7501, i.e., the entry summary. *See also*, 19 C.F.R. § 144.11(a). Moreover, 19 C.F.R. § 146.62(b)(1) mandates that entry documentation, including invoices as provided by 19 C.F.R. parts 141 and 142, must accompany the entry summary. To determine what information is required on the invoices accompanying the entry summary, we turn to 19 C.F.R. § 142.6(a). Specifically, under 19 C.F.R. § 142.6(a)(5), the invoice must contain:

The name and complete address of the foreign individual or firm who is responsible for invoicing the merchandise, ordinarily the manufacturer/seller, but where the manufacturer is not the seller, the party who sold the merchandise for export to the U.S., or made the merchandise available for sale.

(Emphasis added). For further clarification, in Treasury Decision 90-25 (March 27, 1990) we considered comments to the final rule adopting 19 C.F.R. § 142.6(a)(5) and explained that:

Although in the great majority of situations, the manufacturer will be the seller of the merchandise, Customs acknowledges that there will probably be instances where the actual identity of the true manufacturer of the merchandise cannot be ascertained. For this reason, the proposed amendment has been modified to allow the importer to supply Customs with the name and complete address of the individual or firm who sells the merchandise in those situations where the actual manufacturer cannot be identified. *The information Customs needs is the identity of the foreign person or firm who is responsible for introducing the merchandise into the U.S. stream of commerce.* This amendment is intended to satisfy that need.

Manufacturer/Seller Identification Required at Time of Entry, 55 Fed. Reg. 12,342, 12,343 (final rule) (Apr. 3, 1990) (emphasis added). Thus, the invoice accompanying the warehouse entry summary must include the name and address of the foreign individual or firm, usually the manufacturer, who sold, or made available for sale, the merchandise for exportation to the United States. In the case of the alcohol at issue, an invoice accompanying Baja Duty Free's warehouse entry summary must include the name and address of the French manufacturers of the alcohol or the foreign party that made the alcohol available to the domestic distributor for importation into the United States.

Moreover, we note that the facts presented in the internal advice request indicate that after importation, but prior to the filing of the warehouse entry summary by Baja Duty Free, the imported merchandise was sold twice on the documents. The first domestic sale occurred between the domestic distributor, who is the importer of the alcohol, and F&S. The second sale occurred between F&S and Baja Duty Free. Due to these intervening sales, 19 C.F.R. § 141.86(c) requires at least two invoices to accompany the entry summary. Specifically, 19 C.F.R. § 141.86(c) states:

If the merchandise is sold on the documents while in transit from the port of exportation to the port of entry, *the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States*, and the resale invoice or a statement of sale showing the price paid for each item by the purchaser, must be filed as part of the entry, entry summary, or withdrawal documentation. If the original invoice cannot be obtained, a *pro forma* invoice showing the values and transaction reflected by the original invoice must be filed together with the resale invoice or statement.

(Emphasis added). A *pro forma* invoice, in turn, must include information regarding the name and address of the shipper, the seller, the consignee and purchaser; prices and values; country of origin information and so forth. See 19 C.F.R. § 141.85.

Based on the requirements of 19 C.F.R. § 141.86(c), the original invoice reflecting the transaction under which the merchandise actually began its

journey to the United States must accompany the warehouse entry summary filed by Baja Duty Free. The imported alcohol at issue began its journey to the United States from France. The party listed as entering or importing the alcohol from France is the domestic distributor. Therefore, the original invoice that must be included as a part of Baja Duty Free's warehouse entry summary is the invoice reflecting the transaction between the domestic distributor and the French manufacturers and/or sellers of the alcohol. Furthermore, if the original invoice cannot be obtained, then a *pro forma* invoice showing the values and transaction reflected by the original invoice must be filed together with the two resale invoices. See 19 C.F.R. § 141.86(c). In combining 19 C.F.R. § 142.6(a)(5) and 19 C.F.R. § 141.86(c), we conclude that the original or substituted *pro forma* invoice must provide the name and address of the foreign individual or firm who sold, or made available for sale, the merchandise for exportation to the United States.

To summarize, 19 C.F.R. § 142.6(a)(5) requires that the invoice accompanying a warehouse entry summary include the name and address of the foreign individual or firm who sold, or made available for sale, the merchandise for exportation to the United States. For situations where a sale occurred prior to the entry of merchandise, the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States, or a substitute *pro forma* invoice, must accompany the resale invoice. See 19 C.F.R. § 141.86(c). In a situation where resale invoices reflect domestic transactions, the original or substitute *pro forma* invoice constitutes the invoice that contains the name and address of the foreign manufacturer or seller. Consequently, we find that Baja Duty Free must provide, as a part of the warehouse entry summary package, the original or substitute *pro forma* invoice reflecting the transaction under which the alcohol began its journey to the United States. This invoice should: 1) illustrate the transaction between the domestic distributor and the French manufacturers and/or sellers of the alcohol; and 2) include the name and address of the foreign individual or firm, usually the manufacturer, who sold, or made available for sale, the alcohol for export to the United States.

2. Whether the (MID) must be based upon the foreign manufacturer or shipper.

The MID on the warehouse entry summary must be generated using information supplied for the foreign manufacturer or shipper. Although there is a regulation explaining the generation of MIDs for textiles in 19 C.F.R. § 102.23, and the appendix, there is no regulation specifically addressing the generation of MIDs for other types of goods. However, CBP's instructions for CBP Form 7501 provide guidance. We initially note that on March 17, 2011, CBP updated its CBP Form 7501 Instructions, which can be found at http://forms.cbp.gov/pdf/7501_instructions.pdf. Both the updated instructions and the previous version in effect when Baja Duty Free filed its warehouse entry summary on September 11, 2008, state:

For the purposes of [generating the MID], the manufacturer should be construed to refer to the invoicing party or parties (manufacturers or

other direct suppliers). The name and address of the invoicing party, whose invoice accompanies the CBP entry, should be used to construct the MID.

These instructions direct that the manufacturer, invoicing party or parties, or other direct suppliers should be used to construct the code. For the warehouse entry summary filed by Baja Duty Free, however, multiple invoicing parties and invoices exist due to the domestic sales of the imported alcohol. Consequently, we must determine which invoice accompanying the warehouse entry should be used to generate the MID.

As explained above, CBP's regulation, 19 C.F.R. § 142.6(a)(5), requires that the invoice submitted as a part of entry documentation contain the name and complete address of the foreign individual or firm who sold, or made available for sale, the merchandise for exportation to the United States. The history of the regulation makes clear that the purpose for requiring invoices to include the name and complete address of the foreign person or firm was to provide the necessary information for CBP to verify and validate MID codes. See *Manufacturer / Seller Identification Required at Time of Entry*, 55 Fed. Reg. at 12,343. "The information Customs needs is the identity of the foreign person or firm who is responsible for introducing the merchandise into the U.S. stream of commerce." Therefore, the MID must reflect the name and address of the foreign individual or firm to generate valid MIDs. In terms of the warehouse summary filed by Baja Duty Free, the MID should be generated by using the name and address of the foreign manufacturer or seller who sold, or made available for sale, the alcohol for exportation to the United States.

As a final note, your internal advice request questions whether the Memorandum, dated June 18, 1990, on "Clarification of MID Final Ruling" remains in effect. The Memorandum at issue provides guidance on the proper generation of MIDs using information found on invoices submitted with entry packages. It is applicable to all entries, not simply warehouse entries for merchandise entering the commerce of the United States. Consequently, the Memorandum is applicable to the situation presented in your internal advice request where zone-restricted status merchandise is entered into a class 9 bonded warehouse for sale and exportation.

HOLDING:

Sixty days from the date of this letter, Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.CBP.gov, by means of the Freedom of Information Act, and other public methods of distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ATTACHMENT B

OT:RR:CTF:ER
H230176 G GKMICHAEL TOMENGA
NEVILLE PETERSON LLP
1400 16TH STREET, NW
SUITE 350
WASHINGTON D.C. 20036

RE: Fairn & Swanson, Inc.: Request for Reconsideration of Headquarters Ruling Letter H109795, dated May 22, 2012

DEAR MR. TOMENGA:

This is in response to your July 22, 2013, submission on behalf of your client, Fairn & Swanson, Inc. (“Fairn”). We will treat your July 22, 2013 letter as a request for this office to reconsider our decision in Headquarters Ruling Letter H109795, dated May 22, 2012. In addition, we will take into consideration your supplemental submission of arguments dated March 18, 2015. In HQ H109795, we advised the Port of Laredo that when entering merchandise into a class 9 bonded warehouse, or duty-free store, the invoice accompanying the entry summary on CBP Form 7501 must include the name and address of the foreign individual or firm, usually the manufacturer, who sold, or made available for sale, the merchandise for exportation to the United States. Moreover, the Manufacturer Identification Codes (“MID”) required on CBP Form 7501 must be generated using the information of the foreign individual or firm who sold or made available for sale, the merchandise for exportation into the United States. Our reconsideration of this decision follows.

FACTS:

Generally, the facts contained in HQ H109795 are not in dispute. Therefore, we will incorporate the facts from HQ H109795 into this reconsideration. Specifically, the facts involve two transactions between Fairn and its subsidiary, Fairn & Swanson, Inc. d/b/a Baja Duty Free (“Baja Duty Free”). Fairn operates a foreign trade zone (“FTZ”) in Oakland, California. Imported alcohol is admitted into the FTZ in zone-restricted status by Fairn. The alcohol is subsequently withdrawn from the FTZ by Fairn and transferred to Baja Duty Free. Baja Duty Free enters the imported alcohol into its class 9 bonded warehouses, or duty-free stores, for sale and exportation.

To illustrate the transactions you provided two representative warehouse entry summary packages filed by Baja Duty Free. The two warehouse entry summary packages illustrate identical issues raised in your internal advice inquiry. Therefore, we will only discuss one warehouse entry summary package, for entry xxxx664-0 filed on September 11, 2008. The entry summary package for entry xxxx664-0 includes the following documents: 1) the warehouse entry summary on CBP Form 7501; 2) a *pro forma* invoice for the purchase of alcohol by Fairn from a U.S. company that distributes foreign alcohol (“domestic distributor”); 3) a Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit, on CBP Form 7512, documenting the movement of the alcohol from the Port of Miami to the FTZ (“First CF

7512”); 4) an Application for Foreign-Trade Zone Admission and/or Status Designation, on CBP Form 214, documenting the admittance of the alcohol into the FTZ in zone-restricted status; 5) a *pro forma* invoice between Fairn and Baja Duty Free; 6) a second CBP Form 7512 (“Second CF 7512”) documenting the movement of alcohol from the FTZ to Baja Duty Free’s duty-free store located on Grand Central Boulevard, Laredo, Texas; 7) a Blanket Permit Summary for the withdrawal of alcohol from the Grand Central Boulevard duty-free store; and 8) a Record of Bonded Warehouse Activity documenting inventory movement at the Grand Central Boulevard duty-free store. The single clarification requested by Fairn to the facts found in HQ H109795 is that no sale occurs between Fairn and Baja Duty Free. Therefore, the *pro forma* invoice between Fairn and Baja Duty Free documents an internal transfer of merchandise only.

The warehouse entry summary on CBP Form 7501 is filed by Baja Duty Free. On the entry summary, the bill of lading or air waybill number is blank. However, the foreign port of lading for the alcohol at issue is specified as 42737, which correlates to Le Havre, France, and the export date is April 23, 2008. Moreover, Miami, Florida is listed as the U.S. port of unloading and the import date is May 4, 2008. Finally, the country of origin for the alcohol is listed as “FR” for France and the importing carrier is identified with the zone admission number found on the Application for Foreign-Trade Zone Admission and/or Status Designation (“CF 214”).

The First CF 7512, indicates that the first U.S. port of unloading for the alcohol at issue is Miami. Upon arrival in Miami, the alcohol entered into a bonded warehouse located at the port and operated by Schenker, Inc. The original entry summary for the Miami warehouse entry was filed by Moët Hennessy USA, Inc. as importer of record. This document was not included as a part of the document submission. However, a review of CBP’s records associated with the Miami warehouse entry shows that the date of importation is May 4, 2008. No invoices associated with the Miami warehouse entry or bills of lading associated with the importation of the alcohol are available for review.

Moreover, the First CF 7512 does not identify a country of origin or foreign port of lading for the alcohol; however, the document states that multiple vessels under U.S. flags were used to import the alcohol. Rather, the missing information is available on the CF 214 filed by Fairn. Specifically, the CF 214 states that the foreign port of lading for the alcohol is Le Havre, France and that the country of origin is also France. The exportation date is stated as April 23, 2008.

Based on the *pro forma* invoice between Fairn and the domestic distributor, the sale of alcohol by the domestic distributor to Fairn occurred on or about July 9, 2008, the order date, which is approximately two months after the alcohol’s date of importation into the U.S. customs territory. The *pro forma* invoice between Fairn and the domestic distributor contains only the addresses for Fairn and the domestic distributor. It does not provide any details regarding the foreign manufacturer or shipper of the alcohol. The delivery address on the *pro forma* invoice between Fairn and the domestic distributor is Fairn’s Oakland, California FTZ. According to the CF 214 and the First CF 7512, the alcohol arrived at the FTZ from the Port of Miami on August 1, 2008.

The Second CF 7512 dated September 2, 2008, documents the transfer of alcohol from the FTZ to Baja Duty Free's Grand Central Boulevard duty-free store in Laredo, Texas. According to the Second CF 7512, the alcohol is entered or imported by Fairn. In addition, the Second CF 7512 also states that the alcohol originated and was shipped from France on April 23, 2008, by means of a "domestic" carrier. The second invoice, dated September 5, 2008, is a *pro forma* invoice between Fairn and Baja Duty Free, which documents an internal transfer of alcohol from the FTZ to the duty-free store. Like the *pro forma* invoice between Fairn and the domestic distributor, the *pro forma* invoice between Fairn and Baja Duty Free does not provide any information with regards to the foreign manufacturer or shipper of the alcohol.

Based on the above facts, we issued Headquarters Ruling H109795, on May 22, 2012. Thereafter, Fairn submitted the letter currently before us on July 22, 2013, which we consider to be a request for reconsideration.

ISSUE:

1. Whether the invoice accompanying the warehouse entry summary must include the name and address of the foreign manufacturer or shipper.
2. Whether the MID must be based upon the foreign manufacturer or shipper.
3. Whether an original invoice is required pursuant to 19 C.F.R. § 141.86(c).

LAW AND ANALYSIS:

In the internal advice request, the Port of Laredo posed specific questions for this office to address. These questions addressed what information is required on the invoices submitted as a part of Baja Duty Free's warehouse entry summaries and how to generate MID's for these entry summaries. In reconsidering the ruling, we continue to find that applicable regulations require that the name and address of foreign individuals or firms, usually the manufacturer, who sold, or made available for sale, the merchandise for exportation to the United States, must be included on invoices submitted as a part of warehouse entry summaries. Moreover, MIDs on the warehouse entry summaries must be generated using the foreign party's name and address. We have, however, revisited one decision on the application of 19 C.F.R. § 141.86(c) to the facts presented and concluded that the submission of an original invoice is not required.

1. Whether the invoice accompanying the warehouse entry summary must include the name and address of the foreign manufacturer or shipper.

In H109795, we found that the invoice accompanying the warehouse entry summary at issue must include the name and address of the foreign manufacturer or shipper. Our decision on this issue remains unchanged. When making a warehouse entry from an FTZ, 19 C.F.R. § 146.62(a) requires the individual with the right to make entry, or a properly appointed customs broker, to file CBP Form 7501, *i.e.*, the entry summary, or other applicable forms. *See also*, 19 C.F.R. § 144.11(a). Moreover, 19 C.F.R. § 146.62(b)(1) mandates that entry documentation, including invoices as provided by 19 C.F.R. parts 141 and 142, must accompany the entry summary. To determine

what information is required on the invoices accompanying the entry summary, we turn to 19 C.F.R. § 142.6(a)(5), a provision that was promulgated for the specific purpose of generating a proper MID. *See Manufacturer/Seller Identification Required at Time of Entry*, 55 Fed. Reg. 12,342 (Apr. 3, 1990) (final rule) (explaining that the address required in 19 C.F.R. § 142.6(a)(5) is absolutely necessary to determine and construct the unique identifier for the manufacturer or seller in ACS). Under 19 C.F.R. § 142.6(a)(5), the invoice must contain:

The name and complete address of the foreign individual or firm who is responsible for invoicing the merchandise, ordinarily the manufacturer/seller, but where the manufacturer is not the seller, the party who sold the merchandise for export to the U.S., or made the merchandise available for sale.

(Emphasis added). For further clarification, in Treasury Decision 90–25, dated March 27, 1990, we considered comments to the final rule adopting 19 C.F.R. § 142.6(a)(5) and explained that:

Although in the great majority of situations, the manufacturer will be the seller of the merchandise, Customs acknowledges that there will probably be instances where the actual identity of the true manufacturer of the merchandise cannot be ascertained. For this reason, the proposed amendment has been modified to allow the importer to supply Customs with the name and complete address of the individual or firm who sells the merchandise in those situations where the actual manufacturer cannot be identified. *The information Customs needs is the identity of the foreign person or firm who is responsible for introducing the merchandise into the U.S. stream of commerce.* This amendment is intended to satisfy that need.

Manufacturer/Seller Identification Required at Time of Entry, 55 Fed. Reg. at 12,343 (emphasis added). Thus, the invoice accompanying the warehouse entry summary must include the name and address of the foreign individual or firm, usually the manufacturer, that sold, or made available for sale, the merchandise for exportation to the United States. Finally, we note that as an alternative to the actual foreign manufacturer, the foreign individual or firm required by 19 C.F.R. § 142.6(a)(5) may be a foreign seller or a foreign shipper of merchandise. *See id.*, 55 Fed. Reg. at 12,343 (stating that “Again, the regulations provide the importer with the option of providing information on either the seller or the shipper of the merchandise, neither of which may be the actual manufacturer”). In summary, 19 C.F.R. § 142.6(a)(3) requires the invoice accompanying a warehouse entry to include the name and address of the foreign party responsible for introducing the merchandise into the U.S. stream of commerce. This party may be the foreign manufacturer of the merchandise, the foreign seller of the merchandise, or the foreign shipper of the merchandise.

Turning to the arguments raised by Fair in its request for reconsideration, the company first argues that Customs and Border Protection (“CBP”) violated Section 4(a) of the Administrative Procedures Act (“APA”) by interpreting 19 C.F.R. § 142.6(a)(5) to require the invoice accompanying the entry

summary on CBP Form 7501 to include the name and address of the foreign individual or firm, usually the manufacturer, who sold, or made available for sale, the merchandise for exportation to the United States. According to Fairn, this clarification operates to amend and limit 19 C.F.R. § 142.6(a)(5) by prohibiting Fairn, a domestic company, from identifying itself as a party upon which the MID could be based. Fairn also asserts that this result essentially adopts a new requirement without compliance with APA procedures.

In considering Fairn's argument, we first note that it claims that the name and address of a domestic individual who transferred merchandise to a subsidiary satisfies 19 C.F.R. § 142.6(a)(5). Specifically, Fairn reads 19 C.F.R. § 142.6(a)(5) to only require that the invoice accompanying a warehouse entry identify the party who sold or made the merchandise available for sale in the United States. Thus, Fairn states that requiring an invoice to include the name and address of the foreign individual or firm constitutes a new rule of general applicability requiring compliance with APA procedures. Fairn's reading of the regulation ignores the totality of the provision. Moreover, Fairn's contrary interpretation of the regulation suggests that the plain language of the provision includes ambiguities as to who qualifies as the proper invoicing party. As explained in H109795, the requirement for the invoice to reflect the name and address of the foreign person or firm who is responsible for introducing the merchandise into the U.S. stream of commerce is taken directly from the notice and comment rulemaking for the final rule promulgating 19 C.F.R. § 142.6(a)(5). See *Manufacturer/Seller Identification Required at Time of Entry*, 55 Fed. Reg. at 12,343. Therefore, H109795 simply reiterates an existing requirement that was already subjected to APA notice and comment proceedings. No additional APA notice and comment proceedings are required.

Second, Fairn argues that 19 C.F.R. § 142.6(a)(5) does not apply to zone restricted merchandise entering a duty-free store for exportation. According to Fairn's argument, the comment in the final rule promulgating 19 C.F.R. § 142.6(a)(5) explained that "the information Customs needs is the identity of the foreign person or firm who is responsible for introducing the merchandise into the U.S. stream of commerce." *Manufacturer/Seller Identification Required at Time of Entry*, 55 Fed. Reg. at 12,343 (Apr. 3, 1990) (emphasis added). Fairn argues that this reference to "U.S. stream of commerce" effectively modifies the language in 19 C.F.R. § 142.6(a) so that a commercial invoice or *pro forma* invoice required by the regulation is only required "with the entry and before release of the merchandise [into the commerce of the United States] is authorized." (insertion made by Fairn). Finally, Fairn concludes that because zone restricted merchandise entering a duty-free store is sold for exportation and cannot be imported for consumption, the merchandise is not entered into the commerce of the United States. Thus, the merchandise is exempted from the requirements of 19 C.F.R. § 142.6(a)(5).

Contrary to Fairn's reference to legislative history, 19 C.F.R. § 142.6(a)(5) does not include any provision that would exempt importers entering zone restricted merchandise into a duty-free store for exportation from filing a proper commercial invoice or *pro forma* invoice. Moreover, the fact that merchandise is never imported for consumption does not preclude that same merchandise from being entered into the stream of commerce of the United States. As explained in Headquarters Ruling HQ 224433, dated July 1, 1993,

goods that are never entered for consumption and exported, but sold in the United States prior to exportation, are “in essence in the stream of commerce of the U.S. by competing against U.S., or imported duty paid goods for sale.” Although the zone restricted merchandise entered by Fairn into its duty-free stores are ultimately exported, the merchandise is sold multiple times prior to its exportation. For example, the alcohol at issue was first imported into the United States by the domestic distributor on May 4, 2008. Once in the customs territory of the United States, Fairn purchased the alcohol from the domestic distributor on July 9, 2008. Therefore, the goods entered into the stream of commerce of the United States even though an entry for consumption was never made. Consequently, the invoice submitted with the entry of Fairn’s merchandise into the duty-free store must include the name and address of the foreign individual or firm, ordinarily the manufacturer, who sold, or made available for sale, the merchandise for exportation to the United States.

Fairn further argues that the zone restricted merchandise entered into the duty-free store does not require a commercial invoice pursuant to 19 C.F.R. § 141.83(d)(10). Rather, the regulation allows Fairn to provide a *pro forma* invoice, which, according to Fairn, does not require identification of the foreign manufacture or seller. Generally, 19 C.F.R. § 141.83(d)(10) applies to temporary importations under bond. Alternatively, for merchandise entering bonded warehouses, CBP may waive the production of a required commercial invoice and accept a *pro forma* invoice instead pursuant to 19 C.F.R. § 141.92. Regardless of whether Fairn’s *pro forma* invoices at issue in this case were accepted by the Port pursuant to an exemption under 19 C.F.R. § 141.83(d)(10) or a waiver under 19 C.F.R. § 141.92, the issue remains that a *pro forma* invoice must contain the information required in 19 C.F.R. § 142.6(a). Specifically, 19 C.F.R. § 142.6(a) states the following:

The commercial invoice, ***or the documentation acceptable in place of a commercial invoice in those instances listed in § 141.83(d)*** of this chapter, shall be furnished with the entry and before release of the merchandise is authorized. The commercial invoice or ***other acceptable documentation shall contain:***

5) The name and complete address of the foreign individual or firm who is responsible for invoicing the merchandise, ordinarily the manufacture/seller, but where the manufacture is not the seller, the party who sold the merchandise for export to the U.S., or made the merchandise available for sale.

(emphasis added). Based on the plain language of the regulation, a *pro forma* invoice must contain all the information required under 19 C.F.R. § 142.6(a), including the name and address of the foreign individual or firm, usually the manufacturer, who sold, or made available for sale, the merchandise for exportation to the United States. *See* 19 C.F.R. § 142.6(a)(5).

We note that Fairn’s request for reconsideration discusses the requirements of an examination invoice for merchandise admitted into an FTZ. According to Fairn, examination invoices pursuant to 19 C.F.R. § 146.32(b)

must satisfy the requirements identified in 19 C.F.R. Part 141, Subpart F. Consequently, Fairn asserts that such examination invoices are governed by 19 C.F.R. § 141.83(d)(10) and may be a *pro forma* invoice when appropriate. First, an examination invoice for admission of merchandise into an FTZ is not relevant to the issue presented here. Specifically, Fairn is seeking to enter zone restricted alcohol into a class 9 bonded warehouse. Therefore, invoicing requirements for bonded warehouse entries govern. As noted above, if the Port accepts a *pro forma* invoice for a warehouse entry, that *pro forma* invoice must contain all the information required under 19 C.F.R. § 142.6(a), including the name and address of the foreign individual or firm, ordinarily the manufacturer, who sold, or made available for sale, the merchandise for exportation to the United States. Thus, we decline to address the requirements for an FTZ examination invoice because it is beyond the scope of this reconsideration.

In addition, Fairn questions CBP's operational need for an MID for zone-restricted merchandise entered into a duty-free warehouse for exportation. In particular, Fairn asserts that any cargo selectivity decisions regarding the imported merchandise were made and carried out by CBP before the merchandise was admitted into the FTZ. Therefore, Fairn does not believe that an MID is required when the cargo enters into the duty-free store from the FTZ. Furthermore, Fairn notes that CBP's automated systems, including the Automated Commercial System ("ACS"), do not currently support the electronic filing of warehouse entries covering domestic alcohol on which internal revenue taxes are deferred. According to Fairn, the Port of Laredo's scrutiny of the MIDs generated by Fairn stems from the Port's inability to "cope with the challenges presented by [CBP's] programming shortcomings." First, CBP has the right and ability to select any merchandise for examination upon its entry into bonded warehouses. *See* 19 C.F.R. §§ 151.1, 151.4. CBP also has the right to require that warehouse entries, whether filed by paper or electronic means, include a legally accurate MID. Fairn has not raised a valid legal basis for CBP to reconsider the existing regulations and their applicability to the entry of foreign or domestic zone restricted alcohol into duty-free stores. Fairn does not address the legal requirements of the regulation and its arguments go beyond the scope of this reconsideration. A disagreement with existing regulations and policies is not sufficient legal basis for a reconsideration request.

Finally Fairn argues that in many instances, it is not possible for the company to obtain information regarding the foreign manufacturer or seller who caused the goods to be exported to the United States because that information involves third-party transactions with which Fairn has no contract privity. Therefore, the company cannot comply with the invoice requirements and generate a proper MID. As explained above, the name and address of the foreign party that Fairn must provide pursuant to 19 C.F.R. § 142.6(a)(5) is not limited to the foreign manufacturer or seller. Rather, Fairn may also choose to provide the name and address of the foreign shipper responsible for introducing the imported merchandise into the U.S. stream of commerce. In the case of the alcohol at issue, although Fairn may not have access to the information from third parties in prior transactions, Fairn could obtain it from the seller from whom Fairn purchased the imported alcohol as

a condition of the sale. CBP has consistently acknowledged that the identity of foreign manufacturers and sellers may be difficult to obtain due to business practices. See 55 Fed. Reg. at 12,342–43 (acknowledging that there will be instances where the actual identify of the true manufacturer is not ascertainable). However, the option to provide the identity of the foreign shipper may alleviate these concerns. Fairn has not provided a legal basis to justify an exception allowing the company to not supply the required information.

2. Whether the MID must be based upon the foreign manufacturer or shipper.

As we stated in H109795, the MID required on warehouse entry summaries must be generated using information supplied for the foreign manufacturer, foreign seller, or foreign shipper. Although there is a regulation explaining the generation of MIDs for textiles in 19 C.F.R. § 102.23, and the appendix, there is no regulation specifically addressing the generation of MIDs for other types of goods. However, CBP's instructions for CBP Form 7501 provide guidance. We initially note that on March 17, 2011, CBP updated its CBP Form 7501 Instructions, which can be found at http://forms.cbp.gov/pdf/7501_instructions.pdf. Both the updated instructions and the previous version in effect when Baja Duty Free filed its warehouse entry summary on September 11, 2008, state:

For the purposes of [generating the MID], the manufacturer should be construed to refer to the invoicing party or parties (manufacturers or other direct suppliers). The name and address of the invoicing party, whose invoice accompanies the CBP entry, should be used to construct the MID.

These instructions direct that information concerning the manufacturer, invoicing party or parties, or other direct suppliers should be used to construct the code.

Moreover, as explained above, CBP's regulation, 19 C.F.R. § 142.6(a)(5), requires that the invoice submitted as a part of entry documentation contain the name and complete address of the foreign individual or firm who sold, or made available for sale, the merchandise for exportation to the United States. These foreign parties may include the foreign manufacturer, foreign seller, or foreign shipper. The history of the regulation makes clear that the purpose for requiring invoices to include the name and complete address of the foreign person or firm was to provide the necessary information for CBP to verify and validate MID codes. See *Manufacturer/Seller Identification Required at Time of Entry*, 55 Fed. Reg. at 12,343. "The information Customs needs is the identity of the foreign person or firm who is responsible for introducing the merchandise into the U.S. stream of commerce." Therefore, the MID must reflect the name and address of the foreign individual or firm to generate valid MIDs. In terms of the warehouse summary filed by Baja Duty Free, the MID should be generated by using the name and address of the foreign manufacturer, foreign seller, or foreign shipper responsible for introducing the imported alcohol into the U.S. stream of commerce.

As a final note, the Port of Laredo requested guidance regarding whether the Memorandum, dated June 18, 1990, on "Clarification of MID Final Ruling" remains in effect. As we stated in H109795, the Memorandum provides

guidance on the proper generation of MIDs using information found on invoices submitted with entry packages. It is applicable to all entries, not simply warehouse entries for merchandise entering the commerce of the United States. Consequently, the Memorandum is applicable to the situation presented where zone-restricted status merchandise is entered into a class 9 bonded warehouse for sale and exportation.

3. Whether an original invoice is required pursuant to 19 C.F.R. § 141.86(c).

We have modified our decision regarding the application of 19 C.F.R. § 141.86(c). In H109795, we noted that 19 C.F.R. § 141.86(c) states:

If the merchandise is sold on the documents while in transit from the port of exportation to the port of entry, *the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States*, and the resale invoice or a statement of sale showing the price paid for each item by the purchaser, must be filed as part of the entry, entry summary, or withdrawal documentation. If the original invoice cannot be obtained, a *pro forma* invoice showing the values and transaction reflected by the original invoice must be filed together with the resale invoice or statement.

(emphasis added). Moreover, based on the requirements of 19 C.F.R. § 141.86(c), we concluded in H109795 that the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States must accompany the warehouse entry summary filed by Baja Duty Free.

In its request for reconsideration, Fairn argues that the company purchased the alcohol after the merchandise transited from the port of exportation to the port of entry. Therefore, 19 C.F.R. § 141.86(c) does not apply when the alcohol is entered into the duty-free store. We concur. Specifically, we conclude that 19 C.F.R. § 141.86(c) applies to merchandise transiting from the port of exportation to the first port of entry. Here, the alcohol at issue began its journey to the United States from France. Upon arriving in the United States, the alcohol was first entered into a bonded warehouse located at the Port of Miami by Moët Hennessy USA, Inc. Therefore, the warehouse entry filed with the Port of Miami is subject to 19 C.F.R. § 141.86(c) requirements. The warehouse entry made by Baja Duty Free constitutes a second entry from Fairn's FTZ, not from the port of exportation. Therefore, 19 C.F.R. § 141.86(c) does not apply. Consequently, Baja Duty Free does not need to provide the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States when filing the warehouse entry summary.

HOLDING:

After reviewing the reconsideration request, we find that the invoice accompanying a warehouse entry summary, CBP Form 7501, must include the name and address of the foreign individual or firm who sold, or made available for sale, the merchandise for exportation to the United States. These parties include the foreign manufacturer, foreign seller, or foreign shipper responsible for introducing the merchandise into the U.S. stream of commerce. Manufacturer Identification Codes required on the entry summary

must be generated using the name and address of the foreign manufacturer, foreign seller, or foreign shipper. Finally, based on the facts presented, the requirement to submit an original invoice under 19 C.F.R. § 141.86(c) does not apply to Baja Duty Free's warehouse entry. Headquarters Ruling Letter H109795, dated May 22, 2012, is hereby modified.

Sixty days from the date of this letter, Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.CBP.gov, by means of the Freedom of Information Act, and other public methods of distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**REVOCATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATED TO THE
COUNTRY OF ORIGIN MARKING OF CERTAIN SOLAR
PANELS UNDER THE NORTH AMERICAN FREE TRADE
AGREEMENT**

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

ACTION: Notice of revocation of two ruling letters and revocation of any treatment relating to the country of origin marking of certain solar panels under the North American Free Trade Agreement.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters, New York Ruling Letter (NY) R00721, dated September 17, 2004 and NY N047417, dated January 14, 2009, relating to the country of origin marking of certain solar panels under the North American Free Trade Agreement. Similarly, CBP is revoking any treatment previously accorded to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 39, on September 30, 2015. One comment regarding the proposed revocation was received in response to that notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Ross Cunningham, Valuation and Special Programs Branch, at (202) 325-0034.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), a notice was published in the *Customs Bulletin*, Vol. 49, No. 39, on September 30, 2015, proposing to revoke NY R00721, dated September 17, 2004 and NY N047417, dated January 14, 2009, relating to the country of origin marking of certain solar panels under the North American Free Trade Agreement. One comment regarding the proposed revocation was received in response to that notice.

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY R00721, dated September 17, 2004, and NY N047417, dated January 14, 2009, to reflect the analysis contained in HQ H266527, set forth as an

attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. One comment was received, and it is addressed in H266527.

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

Dated: April 11, 2016

MYLES B. HARMON,
Director
Commercial Trade & Facilitation Division

Attachment

HQ H266527

April 11, 2016

OT:RR:CTF:VS H266527 RMC

CATEGORY: Country of Origin

WILLIAM BRENT WEAVER
DIRECTOR OF OPERATIONS
KYOCERA SOLAR, INC.
7812 E. ACOMA DR.
SCOTTSDALE, AZ 85260

Re: Revocation of New York Rulings R00721 and N047417; Country of Origin Marking of Solar Panels from Mexico under the North American Free Trade Agreement

DEAR MR. WEAVER:

This is in reference to two ruling letters issued to Kyocera Solar, Inc.: New York Ruling Letter (NY) R00721, dated September 17, 2004, and NY N047417, dated January 14, 2009. Both rulings concerned the country of origin marking of solar panels imported from Mexico. In NY R00721, we held that solar panels assembled in Mexico were products of Mexico. In NY N047417, we held that it was acceptable to mark the solar panels with the proposed wording “Components from Japan, Assembled in Mexico” or “Components from Japan, Manufactured in Mexico.” After reviewing these two rulings, we found that they are incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), a notice was published in the *Customs Bulletin*, Vol. 49, No. 39, on September 30, 2015, proposing to revoke NY R00721 and NY N047417, relating to the country of origin marking of certain solar panels under the North American Free Trade Agreement (“NAFTA”). One comment regarding the proposed revocation was received in response to that notice, which is addressed herein. For the reasons set forth below, we hereby revoke NY R00721 and NY N047417.

FACTS:

When Kyocera Solar submitted the ruling for NY R00721 in August 2004, it was in the process of setting up a solar-panel assembly line in Tijuana, Mexico. The solar panels, classifiable under subheading 8541.40.6020, Harmonized Tariff Schedule of the United States (“HTSUS”), are assembled using solar cells, classifiable under subheading 8541.40.6030, HTSUS, manufactured at Kyocera’s factory in Japan. All other components, classifiable outside of subheading 8541.40, HTSUS, are imported from Japan, except for the glass panel, which is manufactured in the United States.

Based on the outcome in NY R00721, in the ruling request for NY N047417, Kyocera Solar asked whether it would be acceptable to label the solar panels “Components from Japan, Assembled in Mexico” or “Components from Japan, Manufactured in Mexico.”

ISSUE:

Whether the finished solar panels are a product of Mexico for country of origin marking purposes.

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Section 134.1(j), CBP Regulations (19 C.F.R. 134.1(j)), provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g), CBP Regulations (19 C.F.R. 134.1(g)), defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules, set forth at 19 C.F.R. Part 102.

Section 102.11(a), CBP Regulations (19 C.F.R. 102.11(a)), sets forth the required hierarchy under the NAFTA Marking Rules for determining country of origin for marking purposes. This section states that the country of origin of a good is the country in which:

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

Since the components of the solar panels are manufactured in both Japan and the United States, they are neither “wholly obtained or produced” in one country nor “produced exclusively from domestic materials.” Accordingly, the country of origin of the solar panels may not be determined under the first two steps of the hierarchy in 19 C.F.R. 102.11(a)(1) and (a)(2).

Under the third step of the hierarchy, 19 C.F.R. 102.11(a)(3), the country of origin of a good is the country in which “each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section.” Section 102.1(e), CBP Regulations (19 C.F.R. 102.1(e)) defines “[f]oreign material” as “a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.” The finished solar panels are classified in subheading 8541, HTSUS. When Kyocera Solar’s ruling request was submitted in 2004, the tariff shift rule for subheading 8541, HTSUS required:

- “A change to heading 8541 through 8542 from any other subheading, including another subheading within that group; or
A change to a mounted chip, die or wafer classified in heading 8541 or 8542 from an unmounted chip, die or wafer classified in heading 8541 or 8542; or
A change to a programmed ‘read only memory’ (ROM) chip from an unprogrammed ‘programmable read only memory’ (PROM) chip.”

NY R00721 incorrectly concluded that the Japanese solar cells classified under subheading 8541.40.6030 satisfied the tariff shift rule from any other subheading. Because the finished solar panels are classified under subhead-

ing 8541.40.6020, HTSUS, there is no “change to heading 8541 through 8542 from any other subheading” The 10-digit number is actually the statistical reporting number for an article that is formed by combining the 8-digit subheading number with the appropriate 2-digit statistical suffix. *See* General Statistical Notes 3(a), HTSUS, which describes the “Statistical Reporting Number.”

Further, there is no evidence that the finished solar panels contain any chips, dies, wafers, or “read only memory” chips. Accordingly, the solar panels do not undergo the required change in tariff classification as a result of the operations in Mexico.

When a good’s country of origin cannot be determined under the three methods described in 19 C.F.R. 102.11(a), 19 C.F.R. 102.11(b) provides that “[e]xcept for a good that is specifically described in the Harmonized System as a set, or is classified as a set . . . the country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good.” Here, the single material or component that impacts the essential character to the solar panels is the individual solar cell. The individual solar cells allow the solar panels to fulfill their purpose of generating electricity and represent the majority of the finished product’s value. Therefore, under 19 C.F.R. 102.11(b), the country of origin for marking purposes of the finished solar panels is Japan, the country of origin of the individual solar cells. We also note that since 2004, another rule was added in 19 CFR 102.20 for goods of heading 8541, HTSUS; however, this rule is not applicable to solar panels.

Because the panels’ country of origin is Japan, they cannot be labeled “Components from Japan, Assembled in Mexico” or “Components from Japan, Manufactured in Mexico.” 19 C.F.R. 134.43(e) permits such labeling only when the assembled article’s country of origin is “the country in which the article is finally assembled.” As noted above, the solar panels are goods of Japan. Accordingly, NY N047417 is also incorrect.

CBP received one comment on behalf of the importer, Kyocera Solar Inc. In its comment, Kyocera argues that the NAFTA preference override in 19 C.F.R. § 102.19 applies and that NY R00721 and N047417 were therefore correct in concluding that the solar panels’ country of origin for marking purposes was Mexico. The NAFTA preference override provides that:

Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good.

See 19 C.F.R. § 102.19.

As defined in 19 C.F.R. § 181.1(q), “[o]riginating, when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.” Thus, the NAFTA preference override applies only when a good originates in a NAFTA country under GN 12, HTSUS but does not qualify to be marked as a good of the originating country under 19 C.F.R. § 102.11(a) or (b). At the time that NY R00721 and N047417 were issued, Kyocera did not provide evidence that the

solar panels originated under GN 12, HTSUS. This is why neither NY R00721 nor N047417 refer to the NAFTA rules of origin in General Note 12, HTSUS or invoke the NAFTA preference. Instead, they address only the country of origin marking of the solar panels under 19 C.F.R. § 102. Therefore, in the absence of evidence that the solar panels originated under GN 12, HTSUS, the NAFTA preference override did not apply, and the analysis in NY R00721 and N047417 on the country of origin marking of the solar panels under 19 C.F.R. § 102 was incorrect.

While Kyocera did not provide evidence that the solar panels originated under GN 12, HTSUS in 2004 and 2009 when NY R00721 and N047417 were issued, it has now provided a completed and signed NAFTA certificate of origin and claims that the solar panels originate under GN 12, HTSUS. Thus, CBP can now consider whether future imports will qualify to be marked as products of Mexico pursuant to the NAFTA preference override.

As explained above, the first requirement of the NAFTA preference override in 19 C.F.R. § 102.19 is that the goods originate under GN 12, HTSUS. GN 12(b) sets forth the methods for determining whether a good originates in the territory of a NAFTA party and provides, in relevant part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if:

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Here, because the solar panels are neither “wholly obtained or produced entirely in the territory of Canada Mexico and/or the United States” nor “produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials,” the solar panels must “have been transformed in the territory of Canada, Mexico and/or the United States so that . . . each of the non-originating materials used in the production of such goods undergoes a change in tariff classification [in General Note 12, HTSUS].” The GN 12, HTSUS tariff shift rule applicable to solar panels classified under subheading 8541.40, HTSUS is: “[n]o required change in tariff classification to any of subheadings 8541.10 through 8542.90.” Because no tariff shift is required under the GN 12, HTSUS rule and the finished solar modules were “transformed” for the purposes of GN 12, HTSUS when they were assembled in Mexico, the finished solar panels will originate under GN 12, HTSUS.

The second requirement of the NAFTA preference override in 19 C.F.R. § 102.19 is that the originating good fails to qualify to be marked as a good of the originating country under 19 C.F.R. § 102.11(a) or (b). As explained above, under 19 C.F.R. 102.11(b), the country of origin for marking purposes of the finished solar panels is Japan. Thus, because the finished solar panels originate in the territory of a NAFTA party under GN 12, HTSUS but do not qualify to be marked as a good of the originating country under 102.11(a) or (b), future imports will qualify to be marked as products of Mexico pursuant to the NAFTA preference override.

HOLDING:

Based on the information available when NY R00721 and NY N047417 were issued, the solar panels' country of origin for marking purposes was Japan pursuant to 19 C.F.R. 102.11(b). Therefore, they did not qualify to be labeled "Components from Japan, Assembled in Mexico" or "Components from Japan, Manufactured in Mexico." However, future imports will qualify to be marked as "products of Mexico" pursuant to the NAFTA preference override if Kyocera continues to meet the requirements in 19 C.F.R. § 102.19.

EFFECT ON OTHER RULINGS:

NY R00721, dated September 17, 2004 and NY N047417, dated January 14, 2009, are hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON,

Director

Commercial Trade & Facilitation Division



**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
COUNTRY OF ORIGIN FOR MARKING PURPOSES OF
ORTHODONTIC BRACKETS**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the country of origin for marking purposes of orthodontic brackets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning country of origin of orthodontic brackets. Similarly, CBP intends to revoke any treatment previously

accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATES: Comments must be received on or before June 17, 2016.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, at (202) 325–0351.

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) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the country of origin of orthodontic brackets. Although

in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) B89079, dated September 26, 1997 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY B89079, CBP determined that the country of origin of the subject orthodontic brackets for marking purposes is Mexico. CBP has reviewed NY B89079 and has determined the ruling letter to be in error. It is now CBP’s position that the country of origin for *marking purposes* is the United States (emphasis added). For CBP *duty purposes*, the country of origin of the subject orthodontic brackets is Mexico (emphasis added).

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY B89079 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H274096, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 19, 2016

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY B89079

September 26, 1997

CLA-2-90:RR:NC:1:119 B89079

CATEGORY: Classification; Marking

TARIFF NO.: 9021.19.8500; 9802.00.50

MR. DAVID M. MURPHY

GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP

245 PARK AVENUE

NEW YORK, NY 10167-3397

RE: The tariff classification, country of origin marking and status under the North American Free Trade Agreement (NAFTA), of orthodontic brackets from Mexico; Article 509; NAFTA Marking Rules (Final)

DEAR MR. MURPHY:

In your letter dated August 22, 1997 you requested a ruling on the status of orthodontic brackets from Mexico under the NAFTA. The request is being made on behalf of Ormco Corporation, Glendora, CA.

The articles to be imported are orthodontic brackets for use as parts of orthodontic braces. You state that the brackets are produced by a process in which acrylic is poured over the wire base and that each bracket is designed for a specific tooth. The brackets are manufactured in the U.S. and sent to Mexico to be color coded with a variety of colors. Each color designates a specific tooth for which the bracket is designed. The color coded brackets are returned to the U.S. in unmarked tubular containers and repacked in small plastic boxes for sale to the ultimate purchaser.

The applicable tariff provision for the orthodontic brackets will be 9021.19.8500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for artificial joints and other orthopedic or fracture appliances... other. The general rate of duty will be 2.3 percent.

Subheading 9802.00.50, HTS, provides for articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means: articles exported for repairs or alterations... other. You are of the opinion that the brackets would be eligible for partial duty exemption under this provision.

The brackets are very small and without the color coding would be difficult to work with. The color coding does in fact modify the "performance characteristics" of the brackets. It is hence part of the manufacturing process and not a repair or alteration of a finished product. Therefore the brackets would not be eligible for classification under 9802.00.50, HTS. *See* Dolliff and Company, Inc. V. United States, C.D. 4755, 455 F. Supp. 618 (1978), 599 F. 2d 1015 (1979) and Guardian Industries Corp. V. United States, 3 CIT 9 (1982). The ruling you cited, NY B87049 which dealt with the painting of golf club heads for cosmetic purposes only, can be distinguished from the case under consideration.

The orthodontic brackets, being made entirely in the territory of the United States and Mexico using materials which themselves were originating, will satisfy the requirements of HTSUSA General Note 12(b)(iii). The merchandise will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations and agreements.

MARKING:

We agree that the country of origin marking of the finished brackets is controlled by 19 C.F.R. Section 102.19(b) which states the following:

If, under any other provision of this part, the country of origin of a good which is originating within the meaning of Section 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

For marking purposes therefore the country of origin of the color coded brackets is Mexico. Since your client plans to repackage the brackets after importation, the certification procedure of 19 C.F.R. Section 134.26 will have to be followed. You did not furnish a sample of the repackaged brackets destined for sale in the U.S., we therefore cannot state if the marking your client intends to use will be in compliance with the Regulations.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jacques Preston at 212-466-5488.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H274096

CLA-2 OT:RR:CTF:TCM H274096 TSM

CATEGORY: Classification; Marking

TARIFF NO: 9021.19.8500; 9802.00.50

MR. DAVID M. MURPHY

GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP

399 PARK AVENUE, 25TH FLOOR

NEW YORK, NY 10022-4877

RE: Modification of NY B89079; The tariff classification, country of origin marking and status under the North American Free Trade Agreement (NAFTA), of orthodontic brackets from Mexico; Article 509; NAFTA Marking Rules (Final)

DEAR MR. MURPHY:

In NY B89079, dated September 26, 1997, the National Commodity Specialist Division of U.S. Customs and Border Protection ("CBP") responded to your ruling request on behalf of Ormco Corporation, on the status of orthodontic brackets from Mexico under the NAFTA. We have reexamined NY B89079 and have determined that it needs to be modified with respect to the country of origin marking determination. The classification of the orthodontic brackets is not at issue. Our modification follows.

FACTS:

With respect to the country of origin marking, NY B89079 concluded as follows:

We agree that the country of origin marking of the finished brackets is controlled by 19 C.F.R. Section 102.19(b) which states the following:

If, under any other provision of this part, the country of origin of a good which is originating within the meaning of Section 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

For marking purposes therefore the country of origin of the color coded brackets is Mexico. Since your client plans to repackage the brackets after importation, the certification procedure of 19 C.F.R. Section 134.26 will have to be followed. You did not furnish a sample of the repackaged brackets destined for sale in the U.S., we therefore cannot state if the marking your client intends to use will be in compliance with the Regulations.

We believe that the country of origin marking determination is incorrect.

ISSUE:

What is the country of origin for marking purposes of the orthodontic brackets under consideration?

LAW AND ANALYSIS:

Article 401 of the NAFTA, is incorporated into General Note 12, HTSUS. General Note 12(b)(iii) provides in pertinent part that:

12. North American Free Trade Agreement.

(b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if-

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials;

In NY B89079, CBP concluded:

The orthodontic brackets, being made entirely in the territory of the United States and Mexico using materials which themselves were originating, will satisfy the requirements of HTSUSA General Note 12(b)(iii). The merchandise will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations and agreements.

Then CBP agreed that the country of origin marking of the finished brackets was controlled by 19 CFR 102.19(b), and applied the NAFTA preference override set forth therein. Implicit in CBP’s application of the NAFTA preference override was an origin determination for the orthodontic brackets of the United States.

Article 401 of the NAFTA, is incorporated into General Note 12, HTSUS. General Note 12(a) provides in pertinent part that:

(i) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules and are entered under a heading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “CA” in parentheses, are eligible for such duty rate...

(ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate....

Thus, by operation of General Note 12, the eligibility of a particular good for NAFTA duty preference is predicated, in part, upon an origin determination under the NAFTA Marking Rules of either Canada or Mexico.

However, we agree that the NAFTA Preference Override set forth in 19 CFR 102.19 is applicable to the subject merchandise. Specifically, 19 CFR 102.19(b) states:

(b) If, under any other provision of this part, the country of origin of a good which is originating is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty

purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

The orthodontic brackets are an originating good under NAFTA and have been determined to be a good of U.S. origin. Therefore, the country of origin for CBP *marking purposes* is the U.S. (emphasis added). Because the orthodontic brackets were returned to the U.S. after having been advanced in value or improved in condition in Mexico, the country of origin of the orthodontic brackets for CBP *duty purposes* is Mexico, pursuant to 19 CFR 102.19(b) (emphasis added). Accordingly, the “MX” NAFTA rate will be applicable to the orthodontic brackets.

HOLDING:

For country of origin marking purposes, the country of origin of the orthodontic brackets manufactured in the U.S. and exported to Mexico for color coding operations prior to importation into the United States is the U.S. Therefore, the imported orthodontic brackets are not subject to the marking requirements of 19 U.S.C. 1304.

The orthodontic brackets of U.S. origin which undergo additional processing in Mexico prior to importation into the U.S. will be considered of Mexican origin for purposes of CBP duty pursuant to 19 CFR 102.19(b), inasmuch as the orthodontic brackets qualify as an originating good pursuant to General Note 12, HTSUS, and may be assessed duties at the “MX” NAFTA rate.

EFFECT ON OTHER RULINGS:

NY B89079 is modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial Trade & Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN GARMENT
HANGERS**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of certain garment hangers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of certain

garment hangers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before June 17, 2016.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E. - 10th Floor, Washington, D.C. 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch, at (202) 325-0351.

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) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of certain garment hangers. Although in this notice CBP is specifically referring to New York Ruling Letter (“NY”) N255930, dated August 20, 2014 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N255930, CBP classified garment hangers, imported separately, in heading 3923, HTSUS, specifically in subheading 3923.90.00, HTSUS, which provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other.” However, CBP concluded that when imported with garments, the garment hangers at issue were classified together with those garments. CBP has reviewed NY N255930 and has determined the ruling letter to be in error. It is now CBP’s position that the garment hangers at issue are properly classified, by operation of GRI 5(b), in heading 3923, HTSUS, specifically in subheading 3923.90.00, HTSUS, whether imported separately or with garments.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N255930 and to revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H258772, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 19, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N255930

August 20, 2014

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3923.90.0080

MR. MARK J. SEGRIST
SANDLER, TRAVIS & ROSENBERG, P.A.
225 WEST WASHINGTON STREET, SUITE 1640
CHICAGO, IL 60622

RE: The tariff classification of plastic hangers

DEAR MR. SEGRIST:

In your letter dated July 17, 2014, on behalf of Sears Holdings Management Corporation, you requested a tariff classification ruling.

Five samples were included with your request. All are hangers made of black plastic with an integral plastic top hanging hook. KMTN15 and KMTR15 are 15 inch top hangers. KMT17 and KMTNR17 are 17 inch top hangers. KMBP12 is a 12 inch bottom hanger with metal spring clips.

The applicable subheading for the plastic hangers, if imported separately, will be 3923.90.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles for the conveyance or packing of goods, of plastics, other. The general rate of duty will be 3 percent ad valorem.

You have not identified the country of origin. The rate of duty provided above is the rate applicable to the hangers when they are manufactured in a country with which the United States has Normal Trade Relations.

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

You ask whether the hangers, when imported holding garments, may be classified separately from the garments. General Rule of Interpretation (GRI) 5(b) of the HTSUS provides that, subject to the provisions of GRI 5(a), packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such materials or packing containers are clearly suitable for repetitive use.

The sample hangers are of a kind normally used for the shipment of garments, and they are classifiable with the garments unless they are clearly suitable for repetitive use. In HQ 964963, 964964 and 964948, all dated June 19, 2001, Customs Headquarters ruled that certain hangers that were of substantial construction and that were used in hanger recovery systems for the repeated international transport of garments were suitable for repetitive use for the conveyance of goods and could be classified separately in subheading 3923.90.00, HTSUS, even when imported with garments. Documents were provided to verify the claim that a substantial portion of the hangers that were the subject of those rulings were forwarded to a hanger supply company and then sorted, sanitized and sold to garment vendors for use in packing, shipping, and transporting other garments. The hangers had a useful life of four to six cycles. In HQ 964963, Headquarters noted that actual reuse of the hangers is not necessary as long as the hangers are substantial and are of the class or kind of goods used for the conveyance of garments.

The hangers of your inquiry are not similar in style or construction to the hangers in the above cited rulings. They appear to be of a type used for one-time shipping of garments and given to the customer with the garment at the point of sale. This office has no evidence that hangers of these styles and constructions are of a kind commercially reused for conveyance of garments, and you have not submitted any information or documentation demonstrating repeated use of these particular styles or of similar styles for the commercial shipment of garments. In the absence of such evidence, the hangers are considered to be ordinary packing for the garments with which they are imported.

You have implied that the hangers are suitable for reuse because they comply with VICS hanger guidelines. VICS standards were developed by the Voluntary Interindustry Commerce Standards Association in order to improve the efficiency and effectiveness of the retail industry supply chain. The goal was to create a standard so that garment and apparel makers could supply floor-ready items on standard garment hangers, eliminating the costs of transferring the garments from international shipping containers to the hangers used to display garments for sale on the retail selling floor. VICS compliant hangers include more flimsily constructed hangers such as those for intimate apparel and for infants' clothing which, though standard in size and construction, nevertheless are not suitable for commercial reuse for international shipment and are dutiable with the garments with which they are imported. Therefore, evidence of VICS compliance is not sufficient evidence of commercial reuse.

Evidence that these hangers are suitable for reuse would include invoices or other documentation verifying re-sales of these styles of hangers, after their original use, to garment vendors for use in packing, shipping and transportation of garments. If you can provide such information, you may wish to consider resubmission of your request. In the absence of such evidence, these hangers, when imported with garments, are classifiable with those garments, and are dutiable at the same rate of duty as those garments, in accordance with the provisions of GRI 5(b).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (646) 733-3023.

Sincerely,

GWENN KLEIN KIRSCHNER
Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H258772
CLA-2 OT:RR:CTF:TCM H258772 TSM
CATEGORY: Classification
TARIFF NO.: 3923.90.00

MR. MARK J. SEGRIST, ESQ.
SANDLER, TRAVIS & ROSENBERG, P.A.
225 WEST WASHINGTON STREET, STE. 1640
CHICAGO, IL 60622

RE: Revocation of NY N255930; Classification of imported garment hangers.

DEAR MR. SEGRIST:

This is in reference to New York Ruling Letter (NY) N255930, issued to Sears Holding Management Corporation on August 20, 2014, concerning tariff classification of imported garment hangers. In that ruling, the National Commodity Specialist Division found that plastic hangers imported by your client, Sears Holding Management Corporation, when imported separately, are classified under subheading 3923.90.00, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other.” However, when imported with garments, the subject hangers were found to be classified with those garments and to be dutiable at the same rate of duty as those garments. Upon additional review, we have found this to be incorrect. For the reasons set forth below we hereby revoke NY N255930.

FACTS:

NY N255930, issued to Sears Holding Management Corporation on August 20, 2014, describes the subject merchandise as follows:

Five samples were included with your request. All are hangers made of black plastic with an integral plastic top hanging hook. KMTN15 and KMTR15 are 15 inch top hangers. KMT17 and KMTNR17 are 17 inch top hangers. KMBP12 is a 12 inch bottom hanger with metal spring clips.

ISSUE:

What is the correct classification of the subject plastic garment hangers when imported separately and when imported carrying garments?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

3923 Articles for the conveyance or packing of goods, of plastics;
 stoppers, lids, caps and other closures, of plastics:
3923.90.00 Other

* * *

GRI 5(b), HTSUS, provides as follows:

(b) Subject to the provisions of rule 5(a) above [which are not pertinent here], packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

It has long been CBP's position that actual reuse of the imported hangers is not necessary, and is not required, as long as the hangers are of a type suitable for repetitive use. "Suitable for reuse" does not mean merely that the specific hangers are strong enough to be reused, but also that there exists a commercial viability for that reuse. Once it is determined that the particular hanger style is suitable for reuse, there is no need for any importer to provide evidence that hangers of that style are suitable for reuse, and the benefit of separate classification is afforded to all importers of those hangers, even if the hangers are never actually reused. In HQ 964963,¹ HQ 964964 and HQ 964948, all dated June 19, 2001, CBP ruled that certain plastic hangers that were of substantial construction and that were used in hanger recovery systems for the repeated international transport of garments, were suitable for repetitive use for the conveyance of goods within the meaning of GRI 5(b). Accordingly, CBP concluded that these hangers could be classified separately in subheading 3923.90.00, HTSUS, even when imported with garments. Documents were provided to verify the claim that a substantial portion of the hangers that were the subject of those rulings were forwarded to a hanger supply company and then sorted, sanitized and sold to garment vendors for use in packing, shipping, and transporting other garments. In HQ 964963, CBP noted that actual reuse of the hangers is not necessary as long as the hangers are substantial and are of the class or kind of goods used repetitively for the conveyance of garments.

In NY H86527 and NY H86752, CBP classified separately from the accompanying garments hangers that were part of both the "floor ready" and "hanger recovery" programs of the "VICS." Hangers in the "floor ready" program are those hangers that are ready for sale when received at a retail selling location. Hangers in the "hanger recovery" program are hangers of substantial construction and suitable for international shipment of garments, that are resold for reuse for that function. It should be emphasized that it was only because of the hangers' suitability for reuse in the hanger recovery program that they were classified separately from the accompanying garments in both NY H86527 and NY H86752.

Sears Holding Management Corporation provided the following information demonstrating that the hangers at issue are suitable for repetitive use within the meaning of GRI 5(b): (1) the subject hangers are made entirely of

¹ We note that in this ruling CBP modified HQ 961973, dated August 12, 1999, but not with respect to the conclusion that the hangers at issue were clearly suitable for repetitive use within the meaning of GRI 5(b).

durable molded plastic and are specially designed by the manufacturer for international transit and multiple international reuse cycles; (2) Sears Holding Management Corporation has successfully obtained from CBP HQ 961973, dated August 13, 1999, in which CBP found that hangers substantially similar in construction to the ones at issue here were clearly suitable for repetitive use within the meaning of GRI 5(b); (3) just like the hangers at issue in HQ 961973, the subject hangers were specifically constructed and tested to be used approximately seven to nine times during their useful life; (4) the subject hangers meet and exceed the VICS hanger guidelines, and were specifically designed for international transit and multiple reuse cycles; and (5) upon comparing the subject hangers to the hangers at issue in HQ H079697, dated October 26, 2009 (which were found to be substantial, suitable for and capable of repeated use), the manufacturer of the subject hangers found that they exceeded, in both strength and durability, those at issue in HQ H079697.

Upon review, we find that the record supports a finding that the hangers at issue are strong enough to be reused and that there exists a commercial viability for that reuse, and that hangers of similar construction are reused repeatedly for commercial shipment of garments. Accordingly, it is our position that the hangers at issue are clearly suitable for repetitive use within the meaning of GRI 5(b). Therefore, we conclude that they are separately classified (whether imported separately or with garments) in subheading 3923.90.00, HTSUS, which provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other.”

HOLDING:

By application of GRI 5(b), we find that the subject hangers are classified under heading 3923, HTSUS. Specifically, they are classified in subheading 3923.90.00, HTSUS, which provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other.” The 2016 column one, general rate of duty 3% ad valorem.

EFFECT ON OTHER RULINGS:

NY N255930, dated August 20, 2014, is hereby REVOKED. NY N255930, dated August 20, 2014, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO COUNTRY
OF ORIGIN MARKING OF BICYCLES**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the country of origin marking of bicycles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning the country of origin marking of bicycles. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATES: Comments must be received on or before June 17, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: George Aduhene, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, at (202) 325–0184.

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) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff

Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the country of origin marking of bicycles. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N269994, dated November 20, 2015 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N269994, CBP determined that (as in a similar case involving the same importer (“Kent”), HQ H253522, dated February 5, 2015), that bicycle components (frames) manufactured abroad and assembled into complete and finished bicycles at Kent’s South Carolina facility were substantially transformed, and therefore the country of origin of the complete bicycle was the United States. CBP has reviewed NY N269994 and has determined the ruling letter to be in error. CBP has observed that the facts in HQ H253522 were misinterpreted and misapplied in NY N269994 to arrive at the same conclusion.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N269994 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquar-

ters Ruling Letter (“HQ”) H273304, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 19, 2016

LEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N269994

November 20, 2015
MAR-2:OT:RR:NC:N1:101
CATEGORY: MARKING

LINDSAY B. MEYER, PARTNER
VENABLE LLP
575 SEVENTH STREET, NW
WASHINGTON, DC 20004

RE: The country of origin marking of bicycle components

DEAR LINDSAY MEYER,

This is in response to your letter dated October 22, 2015, on behalf of Kent International, Inc. (“Kent”) of Parsippany, New Jersey requesting a ruling on whether the proposed marking is an acceptable country of origin marking for imported bicycle components.

In your request, you state that Kent plans to produce bicycles in its facility in South Carolina. Kent plans to import numerous bicycle parts which are manufactured abroad (namely frames) and have them assembled into complete and finished bicycles. Thus, having Kent be known as the ultimate purchaser of the imported components, and as such, the imported components (namely frames) are exempt from country of origin marking. In addition, since the imported components (namely frames) are substantially transformed in the U.S., Kent can mark the bicycles “Made in the U.S.A.”.

This would comply with the marking statute, Section 304, Tariff Act of 1930, as amended (19 USC 1304), provided that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR 134), implements the country of origin marking requirements of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the articles in the form in which it is imported.

As in a similar case involving your client, Kent, HQ H253522 (02–05–15), this office is in agreement with your request. When the bicycle components manufactured abroad are assembled into complete and finished bicycles at Kent’s South Carolina facility, the country of origin of the complete bicycle will be the United States.

It should be noted that the port director at the port of entry must be satisfied that Kent will receive these imported bicycle components in their original unopened marked containers, used only as described and not otherwise sold.

Please be aware, if a good is determined to be an article of U.S. origin, it is not subject to the country of origin marking requirements of 19 U.S.C. §1304. Whether an article may be marked with the phrase “Made in the USA” or similar words denoting U.S. origin, is an issue under the authority of the Federal Trade Commission (FTC). We suggest that you contact the FTC

Division of Enforcement, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580 on the propriety of proposed markings indicating that an article is made in the U.S.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Matthew Sullivan at matthew.sullivan@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H273304
CLA-02 OT:RR:CTF:TCM H273304 GA
CATEGORY: Marking

Ms. LINDSAY B. MEYER
PARTNER, VENABLE LLP
575 SEVENTH STREET, NW
WASHINGTON, DC 20004

RE: Revocation of N269994 (November 20, 2015); Country of Origin Marking of Imported Bicycle Components Assembled into Bicycles in United States

DEAR Ms. MEYER:

This is in reference to New York Ruling Letter (“NY”) N269994, dated November 20, 2015, issued to you on behalf of your client Kent International, Inc. (“Kent”) regarding the country of origin marking of imported bicycle components.

We have had an opportunity to review NY N269994 and now believe the ruling to be incorrect for the reasons explained below. This ruling also provides the correct marking determination for the imported bicycle components assembled into bicycles in the United States.

FACTS:

In NY N269994, Customs and Border Protection (“CBP”) considered Kent’s production of bicycles in its facility in South Carolina. Kent imports numerous bicycle parts which are manufactured abroad (namely frames) and assembles them into complete and finished bicycles. In N269994, CBP found that as in a similar case involving the same importer (“Kent”), HQ H253522, dated February 5, 2015, the bicycle components manufactured abroad were assembled into complete and finished bicycles at Kent’s South Carolina facility, and therefore the county of origin of the complete bicycle was the United States.

ISSUE:

What are the country of origin marking requirements for the imported bicycle components (namely frames)?

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines “country of origin” as:

[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added

to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of this part; however, for a good of a North America Free Trade Agreement (NAFTA) country, the NAFTA Marking Rules determine the country of origin.

A substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. See *United States v. Gibson Thomsen Co.*, 27 CCPA 267 (1940) and *National Juice Products Association v. United States*, 628 F. Supp. 978 (Ct. Int’l Trade 1986).

Section 134.35(a), CBP Regulations (19 C.F.R §134.35(a)), states:

Articles other than goods of a NAFTA country. An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of *United States v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into a different article will be considered the “ultimate purchaser” of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part.

In NY N269994, the ruling that is being revoked, CBP determined that the imported components (namely frames) were similar to HQ H253522 and, would be substantially transformed into complete and finished bicycles at Kent’s South Carolina facility. However, the facts of H253522 were misinterpreted and misapplied in N269994. In H253522, the bicycle frames were manufactured in the United States (South Carolina) and combined with imported and domestic parts into a complete bicycle. In contrast, in N269994, the imported bicycle components (namely frames) will be manufactured in an unspecified country and imported into the United States to be assembled with other components into a complete and finished bicycle.

In HQ 734478, dated June 14, 1993, CBP ruled that bicycle frames imported from Taiwan, which were assembled with other components to make complete bicycles were not substantially transformed. In that ruling, CBP noted that the bicycle frame is the most costly component and is one of the essential components of the bicycle (if not the most essential component) imparting the bicycle with its overall shape, size and character. In this instance, frames made in an unspecified country are assembled with the other components of the bicycles in the United States to make the complete and finished bicycles. Because the bicycle is assembled in the United States and one of the bicycle’s essential components, the frame, is made outside of the United States, we find that the country of origin of the bicycle would be imparted by the frame. Accordingly, the bicycle must be marked to indicate the country of origin of the frame.

HOLDING:

NY N269994, dated November 20, 2015, is hereby revoked.

Based on the facts provided, imported bicycle frames are not substantially transformed into new and different articles of U.S. origin when assembled with other bicycle components in the United States to make a complete and finished bicycle. Accordingly, the bicycle must be marked to indicate the country of origin of the frame.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division