

U.S. Customs and Border Protection

8 CFR Part 212

USCBP-2011-0007

CBP Dec. 11-07

RIN 1651-AA81

CLARIFICATION OF COUNTRIES AND GEOGRAPHIC AREAS ELIGIBLE FOR PARTICIPATION IN THE GUAM-COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS VISA WAIVER PROGRAM

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

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This interim final rule amends Department of Homeland Security regulations to clarify that individuals holding British National (Overseas) (BN(O)) passports as a result of their connection to the Hong Kong Special Administrative Region (Hong Kong) are eligible for participation in the Guam-Commonwealth of the Northern Mariana Islands (CNMI) Visa Waiver Program. The Guam-CNMI Visa Waiver Program allows certain nonimmigrant aliens to enter Guam and/or the CNMI as nonimmigrant visitors for business or pleasure without a visa for a period of authorized stay not to exceed forty-five days. This interim final rule provides that beginning [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], individuals holding BN(O) passports as a result of their connection to Hong Kong and traveling to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program on such BN(O) passport must present it and a Hong Kong identification card.

DATES: *Effective Date:* The effective date of the rule is May 23, 2011.

Comment Date: Comments must be received by May 23, 2011.

ADDRESSES: Please submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2011-0007.
- *Mail:* Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street, NW, Washington, DC 20229-1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Cheryl C. Peters, U.S. Customs and Border Protection, Office of Field Operations, (202) 344-1438.

SUPPLEMENTARY INFORMATION:

I. Public Comments

Interested persons are invited to submit written comments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments on the economic, environmental or federalism effects of this rule. We urge commenters to reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authorities that support such recommended change.

II. Background

A. Guam-CNMI Visa Waiver Program

Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229, 122 Stat. 754, 854, subject to a transition period, extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and/or the

CNMI. See sections 212 and 214 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1182 and 1184). On January 16, 2009, the Department of Homeland Security (DHS), through CBP, issued an interim final rule in the **Federal Register** replacing the then-existing Guam Visa Waiver Program with the Guam-CNMI Visa Waiver Program and setting forth the requirements for nonimmigrant visitors seeking admission into Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. See 74 FR 2824.

The January 2009 rule provided that, beginning June 1, 2009, DHS would begin the administration and enforcement of the Guam-CNMI Visa Waiver Program. This program allows nonimmigrant visitors to seek admission for business or pleasure for entry into Guam and/or the CNMI without a visa for a period of authorized stay not to exceed forty-five days. On March 31, 2009, the Secretary of Homeland Security, after the necessary consultations, announced the delayed start of the transition period until November 28, 2009. On May 28, 2009, a technical amendment to the January 2009 rule was published, extending the implementation date of the Guam-CNMI Visa Waiver Program from June 1, 2009 to November 28, 2009. See 74 FR 25387.

The January 2009 rule lists the countries and geographic areas from which otherwise eligible individuals may travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. Among those countries and geographic areas listed are Hong Kong and the United Kingdom. The January 2009 rule allows individuals possessing a Hong Kong Special Administrative Region (SAR) passport and Hong Kong identification card as a result of their connection to Hong Kong to travel under the Guam-CNMI Visa Waiver Program. The January 2009 rule does not address the eligibility of individuals holding British National (Overseas) (BN(O)) passports as a result of their connection to Hong Kong for travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program, and questions have arisen about their eligibility for travel under that program.

B. British Nationals (Overseas)

On July 1, 1997, sovereignty over Hong Kong reverted from the United Kingdom to the People's Republic of China, establishing Hong Kong as a Special Administrative Region of the People's Republic of China. In the years prior to the reversion, the United Kingdom created a new category of British nationality, British National (Overseas) (BN(O)). A person who was considered a British national by his or her connection with Hong Kong, as defined in the Hong Kong (British Nationality) Order 1986, was entitled to apply for BN(O) status, and to hold a passport in that status, by registration. BN(O) status is for life, but is not transferable, and registration ended in

1997. BN(O) passports, while British travel documents, do not confer the same rights as regular United Kingdom passports. BN(O) passports are issued to permanent residents of Hong Kong and do not confer the right of abode in the United Kingdom.

C. The Amendment

Under the Guam Visa Waiver Program, the predecessor to the current Guam-CNMI Visa Waiver Program, BN(O) passport holders were eligible to participate in the program as citizens of “the United Kingdom (including the citizens of the colony of Hong Kong).” 8 CFR 212.1(e)(3)(i). As a result of the reversion of sovereignty, Hong Kong and the United Kingdom are listed separately for the Guam-CNMI Visa Waiver Program. 8 CFR 212.1(q)(2)(ii).

In light of the questions that have arisen regarding whether BN(O) passport holders qualify under the Guam-CNMI Visa Waiver Program in the absence of a specific reference in the regulation to BN(O) passport holders, CBP believes it is appropriate to amend the regulations to clarify this issue. The amended regulation explicitly allows Hong Kong individuals holding BN(O) passports as a result of their connection to Hong Kong to travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. This clarification is based on the political changes in Hong Kong, the idiosyncrasies of the law of the United Kingdom discussed above, and the status of BN(O) passport holders as permanent residents of Hong Kong. Like Hong Kong SAR passport holders, BN(O) passport holders must present a Hong Kong identification card to travel to Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program.

In order to provide BN(O) passport holders sufficient time to become aware of and adjust to the Hong Kong identification card requirement for participation in the Guam-CNMI Visa Waiver Program, the effective date of the amended regulation is May 23, 2011.

In addition, to provide further clarity in the regulation, DHS is relocating the existing regulatory requirements applicable to travelers from Taiwan under the Guam-CNMI Visa Waiver Program, from a parenthetical regarding Taiwan within the country list at 8 CFR 212.1(q)(2)(ii) in place since the January 2009 rule, to a new paragraph, 8 CFR 212.1(q)(2)(ii)(B). This new paragraph contains substantively identical text to the parenthetical in the January 2009 rule. The regulation continues to require that in order to participate in the program as a result of a connection to Taiwan, an individual must be a resident of Taiwan who begins his or her travel in Taiwan and who travels on direct flights from Taiwan to Guam or the CNMI

without an intermediate layover or stop, except that the flights may stop in a territory of the United States en route.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Section 702(b) of the CNRA directs that all regulations necessary to implement the Guam-CNMI Visa Waiver Program shall be considered a foreign affairs function for purposes of section 553(a) of the Administrative Procedure Act (APA). *See* section 212 of the INA, as amended (8 U.S.C. 1182(l)(3)). As was the case with the January 2009 rule that replaced the Guam Visa Waiver Program with the Guam-CNMI Visa Waiver Program, this interim final rule is exempt from the notice and comment and 30-day delayed effective date requirements of the APA. *See* 74 FR 2824. DHS is nevertheless providing the opportunity for public comments. Further, a 60-day delayed effective date is provided in order to allow BN(O) passport holders sufficient time to become aware of and adjust to the Hong Kong identification card requirement for participation in the Guam-CNMI Visa Waiver Program.

B. Executive Order 12866

Section 3(d)(2) of Executive Order 12866 provides that the Executive Order does not apply to a regulation that involves a foreign affairs function of the United States, and thus it does not apply to this rule. Accordingly, the Office of Management and Budget has not reviewed this regulation under that Executive Order.

C. Regulatory Flexibility Act

Because this rule is being issued as an interim final rule on the foreign affairs function of the United States, as set forth above, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Amendments to Regulations

Part 212 of title 8 of the Code of Federal Regulations is amended as set forth below:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Public Law 108–458); 8 CFR part 2.

Section 212.1(q) also issued under section 702, Public Law 110–229, 122 Stat. 754, 854.

2. Section 212.1(q)(2)(ii) is revised to read as follows:

§ 212.1 Documentary Requirements for Nonimmigrants.

* * * * *

(q) * * *

(2) * * *

(ii) *Eligible Countries and Geographic Areas.* Nationals of the following countries are eligible to participate in the Guam-CNMI Visa Waiver Program for purposes of admission to both Guam and the CNMI: Australia, Brunei, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, and the United Kingdom. Travelers with a connection to one of the following geographic areas -- the Hong Kong Special Administrative Region (Hong Kong) or Taiwan -- may also be eligible to participate in the Guam-CNMI Visa Waiver Program for purposes of admission to both Guam and the CNMI, *see* paragraphs (q)(2)(ii)(A) and (q)(2)(ii)(B) respectively.

(A) *Hong Kong Special Administrative Region (Hong Kong).* To be eligible to participate in the program as a result of a connection to Hong Kong, the following documentation is required: a Hong Kong Special Administrative Region (SAR) passport with a Hong Kong identification card; or a British National (Overseas) (BN(O)) passport with a Hong Kong identification card.

(B) *Taiwan.* To be eligible to participate in the program as a result of a connection to Taiwan, one must be a resident of Taiwan who begins his or her travel in Taiwan and who travels on direct flights from Taiwan to Guam or the CNMI without an intermediate layover or stop, except that the flights may stop in a territory of the United States en route.

* * * * *

Dated: March 16, 2011

JANET NAPOLITANO,
Secretary.

[Published in the Federal Register, March 23, 2011 (76 FR 16231)]

19 CFR PARTS 12, 102, 141, 144, 146, and 163

CBP Dec. 11-09

USCBP-2005-0009

RIN 1515-AD57 (FORMERLY RIN 1505-AB60)

**COUNTRY OF ORIGIN OF TEXTILE AND APPAREL
PRODUCTS**

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to title 19 of the Code of Federal Regulations (“CFR”) to revise, update, and consolidate the Customs and Border Protection (“CBP”) regulations relating to the country of origin of textile and apparel products. The regulatory amendments adopted as a final rule in this document reflect changes brought about, in part, by the expiration on January 1, 2005, of the Agreement on Textiles and Clothing (“ATC”) and the resulting elimination of quotas on the entry of textile and apparel products from World Trade Organization (“WTO”) members. The primary regulatory change consists of the elimination of the requirement that a textile declaration be submitted for all importations of textile and apparel products. In addition, to improve the quality of reporting of the identity of the manufacturer of imported textile and apparel products, this document adopts as a final rule an amendment requiring importers to identify the manufacturer of such products through a manufacturer identification code (“MID”).

DATES: Final rule effective March 17, 2011.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Roberts Abels, Textile Operations, Office of International Trade, (202) 863-6503.

Legal aspects: Cynthia Reese, Tariff Classification and Marking Branch, Office of International Trade, (202) 572–8812.

SUPPLEMENTARY INFORMATION:

Background

On January 1, 2005, the Agreement on Textiles and Clothing (“ATC”) expired. The ATC was the successor agreement to the Multifiber Arrangement Regarding International Trade in Textiles (“MFA”) which governed international trade in textiles and apparel through the use of quantitative restrictions. The ATC provided for the integration of textiles and clothing into the General Agreement on Tariffs and Trade (“GATT”) regime over a 10-year transition period. With the conclusion of the 10-year period, the integration was complete and the ATC thus expired. As of January 1, 2005, textile and apparel products of World Trade Organization members are no longer subject to quantitative restrictions for entry of such products into the United States.

By letter dated February 11, 2005, the Chairman of CITA requested that CBP review the regulations relating to the country of origin of textile and apparel products set forth in § 12.130 of the CBP regulations (19 CFR 12.130) and recommend appropriate changes in light of the conclusion of the ten-year transition period for the integration of the textile and apparel sector into GATT 1994 to ensure ongoing enforcement of trade in textiles and apparel. By letter dated February 23, 2005, CBP responded to CITA’s request. CITA agreed by letter dated May 4, 2005, that § 12.130 should be amended at this time and responded to the recommendations offered by CBP in response to CITA’s solicitation of February 11, 2005. By letter dated July 28, 2005, the Department of the Treasury, pursuant to the authority retained by the Department of the Treasury over the customs revenue functions defined in the Homeland Security Act, and pursuant to section 204 of the Agricultural Act of 1956, as amended, as that authority is delegated by Executive Order 11651 of March 3, 1972, and Executive Order 12475 of May 9, 1984, and in accordance with the policy guidance, recommendation and direction provided by the Chairman of CITA in his letter of May 4, 2005, authorized and directed the Department of Homeland Security to promulgate, as immediately effective regulations, amendments to the CBP regulations regarding the country of origin of textiles and textile products, including elimination of the textile declaration and requiring that importers provide the identity of the manufacturer.

Accordingly, on October 5, 2005, CBP published CBP Dec. 05–32 in the **Federal Register** (70 FR 58009) setting forth interim amendments to the CBP regulations relating to the country of origin of textile and apparel products. In addition to revising and updating the provisions of § 12.130, CBP Dec. 05–32 re-designated § 12.130 as new §§ 102.22 and 102.23(b) and (c) to consolidate the rules of origin for textiles and apparel products for all countries in Part 102 of the CBP regulations. Similarly, §§ 12.131 and 12.132, which set forth certain procedural matters regarding the entry of textile and apparel products, were also revised and updated and, as part of the consolidation of the textile regulations, re-designated as new §§ 102.24 and 102.25, respectively. The interim amendments were effective on the date that the interim rule was published in the **Federal Register** (October 5, 2005). For a more comprehensive discussion of these interim regulatory amendments, please see CBP Dec. 05–32.

One of the principal regulatory changes effected by CBP Dec. 05–32 was the elimination of the requirement that a textile declaration accompany importations of textile and apparel products. The interim rule document stated that this will reduce the paperwork burden on importers and is consistent with the movement toward paperless entries.

In addition, the interim amendments included a requirement that importers of textile and apparel products identify on CBP Form 3461 (Entry/Immediate Delivery) and CBP Form 7501 (Entry Summary), and in all electronic data submissions that require identification of the manufacturer, the manufacturer of such products through a manufacturer identification code (MID) constructed from the name and address of the entity performing the origin-conferring operations. CBP Dec. 05–32 stated that this requirement resulted from guidance provided by CITA and the Department of the Treasury, and that it applied to all entries of textile or apparel products listed in § 102.21(b)(5) of the CBP regulations. The interim rule document explained that this requirement will assist CBP in verifying the origin of imported textile and apparel products, thereby enabling CBP to better enforce trade in textile and apparel products.

CBP Dec. 05–32 noted that importers of all goods are required to provide either a manufacturer or shipper identification code at the time of entry. The MID requirement for textile or apparel goods described above differs from the identification code required for all products in that the MID must identify the manufacturer (*i.e.*, the entity performing the origin-conferring operations with respect to the imported product).

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect

on October 5, 2005, CBP Dec. 05–32 provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule, and the prescribed public comment period closed on December 5, 2005. A discussion of the comments received by CBP is set forth below.

Discussion of Comments

A total of 26 commenters responded to the solicitation of public comments on the interim regulations set forth in CBP Dec. 05–32. Nearly all of the commenters supported the elimination of the textile declaration, although 24 of the commenters expressed opposition to or raised concerns or questions regarding the interim rule’s requirement that entries of textile and apparel goods identify the manufacturer of the goods through a manufacturer identification code (MID). The comments are discussed below.

Comment:

Thirteen of the commenters objected to the fact that the interim rule became effective immediately upon publication in the **Federal Register** and, as a result, failed to provide any advance notice to the trade community of the change in the MID requirement for textile and apparel products. These commenters emphasized that because a change of this significance has impacts on many levels of trade, prior notice is necessary to afford importers and other supply chain participants sufficient time to fully understand the new MID requirement and to establish procedures to meet the requirement. One commenter stated that the adoption of the interim rule without a “phase-in” period is not in conformity with the principle of “informed compliance” and that members of the trade community believe that business certainty is imperative for good trade compliance.

CBP’s Response:

CBP fully understands the concerns expressed by the commenters regarding the interim rule’s immediate effective date. It was in response to these concerns that CBP decided to delay enforcement of the new requirement, as discussed in more detail below. CBP will continue to work with the trade community to ensure that this regulatory change results in as little disruption to the flow of legitimate trade as possible.

Comment:

Although several commenters noted that CBP delayed enforcement of the new MID requirement until November 18, 2005, ten commenters urged that CBP delay implementation and/or enforcement of the

revised MID requirement beyond that date to allow importers and other trade participants adequate time to track the required MID information and incorporate it into their logistic systems. Four commenters recommended a six-month phase-in period, two commenters suggested a delay of 90 days in enforcing the new MID requirement, one commenter suggested a one-year delay (until October 5, 2006) in implementing and enforcing the requirement, and one commenter recommended a delay in enforcement until the final rule is published. Two other commenters stated that the final rule in regard to the MID requirement should provide the public with advance notice of any changes.

CBP's Response:

The interim regulations took effect on the date of publication of CBP Dec. 05-32 (October 5, 2005). However, cognizant of the challenges facing some importers in complying with the new MID requirement, CBP advised the importing community by administrative notice (TBT-05-029 dated October 20, 2005) posted on the cbp.gov website that it was delaying enforcement of the requirement until November 18, 2005. CBP believed at that time that a further delay in the implementation and/or enforcement of the MID requirement was unwarranted. The requirement now has been in place for an extended period of time, and it appears that few importers are experiencing problems complying with the requirement.

Regarding the request by several commenters for advance notice of any changes in the MID requirement effected by the final rule, CBP is making two changes to the MID requirement, as discussed later in this comment analysis. However, these changes limit the scope of the MID requirement and, therefore, reduce the burden on the importer. This final rule is effective upon publication in the **Federal Register**.

Comment:

One commenter stated that with respect to merchandise that was procured before the interim rule was published, importers were not on notice that the new MID would be required to make entry. Therefore, according to the commenter, it would be a violation of the Due Process Clause of the U.S. Constitution for CBP to penalize importers (or their customs brokers) for failing to present accurate MIDs when the merchandise was procured prior to publication of the interim rule. The commenter further suggested that CBP implement and publish a policy of non-enforcement with respect to this merchandise.

CBP's Response:

As noted earlier in this comment discussion, CBP informed the importing community by administrative notice posted on the cbp.gov website that CBP was delaying enforcement of the new MID requirement until November 18, 2005. With respect to imported textile or apparel goods that may have been purchased prior to October 5, 2005 (but were entered on or after November 18, 2005), CBP believes that the nearly six-week delay in enforcement afforded these importers sufficient time and notice to enable them to ascertain the identity of the manufacturers of their goods (if not already known) for purposes of constructing accurate MIDs in compliance with § 102.23(a). For this reason, CBP declines to implement a policy of non-enforcement with respect to such merchandise. However, in determining whether, or to what extent, penalties should be assessed in instances in which importers of textile or apparel goods fail to present accurate MIDs, CBP port directors will take into consideration the circumstances of each case, including the importer's use of reasonable care in attempting to determine the information necessary to comply with the new MID requirement.

Comment:

One commenter stated that requiring the change in the MID requirement is a major rule change that should have been the subject of a notice of proposed rulemaking and pre-implementation comment in conformance with the mandates of the Administrative Procedure Act (APA). According to this commenter, the interim rule's conclusion that the foreign affairs exception of the APA applies is incorrect (rendering the interim regulations null and void) for two main reasons. First, the notion that the new MID requirement is centrally aimed at enforcing textile restraint agreements with China is belied by the fact that the requirement applies to textile goods from *all* countries. Second, CBP's authority to promulgate regulations relating to the country of origin of textile products derives from a delegation of congressional authority (section 334 of the Uruguay Round Agreements Act) and is no longer within the discretion of the Executive Branch.

CBP's Response:

CBP promulgated these regulations pursuant to section 204 of the Agricultural Act of 1956, as amended, and as directed by the Department of the Treasury. They were issued as "immediately effective interim regulations" because they involve a foreign affairs function of the United States.

Section 334 of the Uruguay Round Agreements Act sets forth rules for determining the origin of textile products and authorizes the issuance of regulations to implement those rules. However, section 334(b) begins with the words “[e]xcept as otherwise provide for by statute” and proceeds to provide principles by which the origin of textile products is to be determined “for purposes of the customs laws and the administration of quantitative restrictions.” Section 204 of the Agricultural Act of 1956, as amended, is broader in scope than section 334 and provides for the issuance of regulations relevant to the enforcement of any textile agreement.

The enactment of section 334 of the Uruguay Round Agreements Act did not eliminate the President’s authority under section 204 of the Agricultural Act of 1956 to regulate the importation of textile products.

Regarding the commenter’s reference to the textile restraint agreement with China, CBP notes that the United States--China Memorandum of Understanding dated November 8, 2005, has expired.

However, CBP noted in the interim rule that “by improving the proper reporting of the country of origin of textile imports, these interim regulations [including the MID requirement] will facilitate enforcement and administration of the various bilateral and multi-lateral free trade agreements with which the United States is a party by helping to ensure that only those textile products that are entitled to trade benefits receive those benefits.” Textile and apparel products may receive preferential tariff treatment under the various free trade agreements (FTAs) as originating goods (*i.e.*, goods that meet the applicable rules of origin) or, under certain FTAs, as non-originating goods that nevertheless qualify for preference under tariff preference levels (TPLs). TPLs negotiated by the President under certain FTAs limit the quantity of textile and apparel products that may receive preferential tariff treatment when they fail to qualify as originating goods under the applicable rules of origin. In view of the continuing proliferation of free trade agreements between the United States and numerous other countries around the world, CBP believes that it is entirely appropriate to apply the new MID requirement to textile and apparel products imported into the United States from all countries.

Comment:

Eleven commenters complained that the new MID requirement places an undue burden on importers and exporters because of: (1) significantly increased paperwork and associated costs to importers in terms of the size (number of pages) of typical entries, especially in regard to consolidated shipments sourced from multiple manufactur-

ers and multiple countries (requiring MID codes on a line-by-line basis); (2) increased paperwork and costs to collect, track, report, and store data for the first time relating to the actual manufacturer; (3) costs involved in reprogramming exporter and importer systems to capture manufacturer information; (4) additional costs to buyers and sellers when shipments are refused entry by CBP due to incorrect MID information; and (5) exorbitant costs and physical obstacles associated with segregating fungible goods that previously were commingled in inventory without reference to the manufacturer. One commenter alleged that the new MID requirement is more of a burden on importers than the textile declaration that was just eliminated.

CBP's Response:

Based on discussions with the trade community and from a review of the textile declarations submitted over the years, CBP believes that most importers were aware of the name of the entity producing their goods and were providing this information to CBP prior to implementation of the new MID requirement. For these companies, there has been little, if any, additional expense or burden associated with complying with the new requirement. CBP understands that there are some companies that face challenges in complying with the new regulation. However, CBP worked closely with the trade community before implementing the interim regulations and believes that the elimination of the paper textile declaration, which was a required document for nearly all textile shipments to the United States, is a benefit to most firms. The elimination of the paper textile declaration has allowed importers to complete paperless entry filing, thereby facilitating trade in textiles and wearing apparel. CBP believes that the overall tradeoff between the elimination of the textile declaration and the initiation of the new MID requirement is of benefit to the majority of importers. CBP recognizes that expenditures may be necessary to comply with the new rule with respect to fungible goods that are commingled in inventory. But, consistent with common business practices, many companies already know the identity of their suppliers/producers and the quantity of products purchased from each for accounts payable purposes.

Comment:

Two commenters stated the new MID requirement for textile and apparel goods is having a severe and unjustifiable impact upon the ability of the EU and Swiss textile and apparel industries to sell their products into the U.S. market. According to these commenters, this

unexpected new requirement is creating significant problems, and a growing number of companies are having their products blocked at Customs, thus imposing huge costs on them and placing several on the verge of bankruptcy through their inability to deliver products on time to their U.S. customers.

CBP's Response:

Although the interim regulations were immediately effective, CBP recognized the challenges facing some importers in complying with the new regulations and accordingly delayed enforcement to permit companies to fully implement the requirements. However, as previously indicated, CBP no longer requires the submission of a paper textile declaration that was traditionally completed by the manufacturer. The elimination of the textile declaration should expedite the processing of textile entries. The textile declaration required information on manufacturing processes that could only be obtained by contacting the manufacturer. CBP believes that providing the MID constructed from the name and address of the manufacturer is a less intrusive and onerous undertaking than describing the production process which was a requirement of the textile declaration.

Comment:

Two commenters questioned whether the new MID requirement is in conformity with "WTO common practice" because the requirement appears to be: (1) stricter and more cumbersome than the previous one that regulated textile and apparel imports during the Multi Fiber Arrangement (MFA) and the subsequent WTO Agreement on Textile and Clothing (ATC); and (2) inapplicable to a few country suppliers who have privileged relations with the U.S.. A third commenter stated that the new requirement may be in contradiction to the goals of Article 2 of the WTO Agreement on rules of origin, such as "not to create unnecessary obstacles to trade." This commenter asked whether certain free trade partners of the U.S. are exempt from the new MID requirement.

CBP's Response:

CBP Form 3461 (Entry/Immediate Delivery) and CBP Form 7501 (Entry Summary) require importers of all goods (textile and non-textile products) to provide a MID at the time of entry in blocks 26 and 13, respectively. Prior to publication of the interim amendments, importers of all goods had the option of constructing the MID from the name and address of the manufacturer, shipper or exporter. However, effective October 5, 2005, importers of textile and apparel prod-

ucts have been required to construct the MID from the manufacturer only, and not from the exporter or shipper (unless that entity is also the manufacturer). Prior to this change, many importers were already constructing the MID from the name and address of the manufacturer. Only in cases in which importers of textile products were constructing the MID from the shipper or exporter (who was not also the manufacturer) have importers been required to provide a different MID. The MID requirement for textile and apparel goods was created, in part, to facilitate trade into the United States by compensating for the elimination of the paper textile declaration.

Comment:

A commenter stated that the new MID requirement will generate fewer paperless entries, contrary to CBP's stated goal of a paperless environment. Another commenter stated that it was his understanding that the Automated Invoice Interface (AII) module of ACS/ABI is capable of only handling one MID per commercial invoice. This commenter also indicated that it is his understanding that the AII module is mandatory for Remote Location Filing (RLF), and that, under the new MID requirement, an entry will need to show as many MIDs as there are actual manufacturers of the goods in the shipment. The commenter asked whether "CBP is capable of accepting multiple MID codes per invoice for AII/RLF purposes," and, if the answer is no, whether the new requirement is defeating the push toward automation.

CBP's Response:

The "AII" module, utilized for electronic invoices, is capable of handling more than one MID per invoice. For example, if there are three lines on an invoice, each line could be transmitted separately with a different MID for each. If a broker needs assistance with the AII module, he or she should contact their ABI Client Representative. Also, it should be noted that the AII module is separate from the line data transmitted for purposes of CBP Forms 3461 and 7501. The RLF program allows for multiple line entries and a broker would be able to transmit a different MID for each line on the entry/entry summary.

Comment:

Two commenters addressed whether the information collections set forth in this interim rule meet the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). One commenter contended that the estimates of the annual burden associated with these information

collections, as published in the **Federal Register**, greatly understate the additional level of burden and cost placed on companies as a result of this interim rule. The second commenter stated that because the interim rule “results in a tremendous increased burden on importers with regard to the quantity and content of the information to be collected,” the rule violates the basic principles of the Act.

CBP’s Response:

CBP consulted closely with many parties before the issuance of this regulation. Although some importers may find it necessary to increase their data collections, CBP believes that those importers who already had knowledge of the manufacturer of their goods will have a significantly-reduced information collection burden due to the elimination of the textile declaration. In estimating the annual burden associated with the collection of information set forth in the interim rule, CBP took into account that many U.S. importers of textile and apparel products already knew the name and address of the entity performing the origin-conferring operations with respect to their goods.

Comment:

Eight commenters provided examples of situations in which they allege it will be impossible or extremely difficult for importers of textile and apparel goods to comply with the requirement that entries identify the entity that performed the origin-conferring operations through a MID. Several of these commenters indicated that requiring the identification of the manufacturer in these situations in effect imposes a barrier to trade. The examples provided include:

a. Cross-border trade, especially between the U.S. and Canada, involving re-imports/re-exports, such as when clothing from the U.S. is cleaned, repaired, or altered in Canada and returned to the U.S. (or vice-versa). Cross-border trade in which a company is three or four steps removed from the importer of the goods into the NAFTA territory and is unable to determine the manufacturer due to the commingling of the goods in inventory by parties in the chain of commerce both within and outside the NAFTA territory;

b. Fungible goods, such as parts and trimmings, that are procured from multiple manufacturers and are commingled in inventory without reference to the manufacturer;

c. Fabric purchased from a middleman who has no information on the identity of the weaver of the fabric for a myriad of reasons such as the unavailability of records due to the passage of time or because the manufacturer has gone out of business;

- d. Mail orders of textile and apparel items by U.S. retail customers;
- e. Textile products sourced from vendors who subcontract to a “cottage industry,” primarily involving individuals working from their homes;
- f. Textile and apparel goods entered into a bonded warehouse or foreign trade zone and not intended to be sold or used in U.S.;
- g. Clothing contributed for charitable purposes from outside the U.S.; and
- h. Textile and apparel articles imported as sets.

CBP's Response:

For the most part, U.S. importers should be aware of their supply chain and, therefore, should know the identity of the manufacturer of their goods. If an agent or seller is unwilling to provide the importer with the identity of the manufacturer, the importer should question the security of that transaction and/or the legality of the production process. However, CBP recognizes that there may be instances in which the importer, despite the use of reasonable care, is unable to determine the identity of the entity that performed the origin-conferring operations with respect to certain imported goods. Under these circumstances, importers must be able to demonstrate to the CBP port director the use of reasonable care in attempting to determine the information required to comply with the MID regulation. Although the importer technically may be in violation of § 102.23(a) for not providing the required MID in these rare instances, CBP port directors will take into account the importer's use of reasonable care in determining whether to assess penalties.

The following examples are offered to provide guidance as to when a port director may consider not pursuing penalties:

- Antique Persian carpets are imported from a European dealer. The importer has a statement from the dealer claiming that the dealer has no idea who produced each carpet.
- Six one-of-a-kind dresses purchased at retail at a South American boutique are imported into the United States. The importer offers correspondence showing that the boutique owner does not know the entities that produced the 6 dresses being imported.
- An importer purchases vintage World War II uniforms on a trip to Eastern Europe. Most of the uniforms were surplus with no visible signs of wear and, therefore, not eligible for entry as worn clothing under heading 6309, HTSUS. The importer, due in part to historical interest, asks the shop owner for the identity of the manufacturer. The shop owner is unable to provide any infor-

mation relating to the production of the uniforms, even after checking various records, including relevant invoices, packing slips, and shipping documents. Together, the shop owner and the eventual importer verify that neither the surplus goods nor the boxes in which they are packed contain information on the manufacturer.

The following examples are offered to provide guidance as to when a port director may consider pursuing penalties:

- An importer states to CBP that his agent located in Asia does not wish to disclose the name of the manufacturer for fear of being cut out of future business.
- A particular style of flannel bed sheets formed from Asian cloth is imported from Europe. Pursuant to the origin rules in §102.21, the sheets are a product of the country where the cloth was formed. Because the goods were purchased from Europe, the importer believes it is “too difficult” to request the necessary origin information from the European supplier.

Comment:

Ten commenters raised business confidentiality concerns regarding the new MID requirement for textile and apparel products. Five of these commenters pointed out that where the seller is not the manufacturer of the imported goods but an intermediary, the seller may be reluctant, or even refuse, to disclose information regarding its sources for fear that the importer will bypass the seller in future transactions by going directly to the manufacturer to purchase goods. Five of the commenters also expressed concern that identifying the manufacturer on entry documents increases the risk of the disclosure of proprietary business information (product sources) to competitors. In this regard, several commenters indicated that there was some confusion in the trade as to whether the interim rule requires the submission of the name and address of the manufacturer in addition to the MID to provide CBP the means to verify the accuracy of the MID provided. One commenter suggested the use of a confidential MID system using random codes that are known only to CBP and the exporter. Another commenter expressed concern that part of CBP’s justification in requiring the MID is to enable CBP to provide specific information to foreign customs administrations concerning foreign entities violating customs laws.

CBP's Response:

Regarding the concern that an intermediary may be reluctant or even refuse to disclose the identity of its suppliers, CBP incorporates by reference the response to the immediately-preceding comment above.

The objectives of the regulatory changes are to assist in the enforcement of U.S. textile laws and to facilitate the movement of textile trade into the United States. The MID requirement has allowed CBP to eliminate the paper textile declaration, thereby permitting the electronic processing of entries. The textile and apparel MID requirement involves providing the Manufacture Identification *Code* on appropriate entry documentation. There is no requirement that the name and address of the manufacturer appear on the commercial invoice or other entry documentation. However, CBP has the right to verify the accuracy of all information provided by importers by requesting and reviewing additional records and documentation. CBP can provide assurances that the U.S. Government and its employees are prohibited from disclosing business confidential information pursuant to the Trade Secrets Act (18 U.S.C. 1905). In addition, § 552(b)(4) of the Freedom of Information Act, as amended, provides an exemption from the disclosure by the U.S. Government of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." CBP considers all information provided in connection with the entry process to be confidential (*see* 19 CFR 103.34 and 103.35) and as such it is for official use only. CBP, however, reserves the right, pursuant to 19 U.S.C. 1628, to exchange this information with foreign customs and law enforcement agencies, as appropriate, for law enforcement purposes on a limited case-by-case basis.

Comment:

Four commenters recommended that, because informal entries were exempt from the textile declaration requirement, CBP similarly should provide an exemption from the MID requirement for non-commercial shipments for personal use as well as goods entered on informal entries.

CBP's Response:

CBP fully appreciates the concerns regarding the MID requirement for personal use shipments and has consulted with CITA regarding this matter. In a letter dated April 13, 2006, the Chairman of CITA concurred with CBP's suggested exclusion of personal use shipments from the MID requirements of § 102.23(a). Accordingly, § 102.23(a)

has been amended in this final rule document to provide that the MID must reflect the entity performing the origin-conferring operations only with respect to commercial importations. As a result of this change, all personal use shipments subject to formal or informal entry procedures will be excepted from the MID requirement set forth in § 102.23(a), while all commercial shipments, whether covered by formal or informal entries, will continue to be subject to this requirement.

CBP wishes to clarify that this exemption relates only to the requirement that the MID be constructed from the entity performing the origin-conferring operations. Importers of personal use shipments must continue to provide a MID (a required data element on CBP Forms 3461 and 7501), but the MID may be constructed from the manufacturer, shipper, or exporter.

Comment:

Nine commenters urged CBP to allow the MID to be constructed from entities other than those performing the origin-conferring operations in situations in which it is impossible or extremely difficult to ascertain the identity of the manufacturer. One commenter indicated that such situations would include when the seller refuses to provide the identity of the manufacturer for business proprietary reasons. Two of the commenters stated that the MID required by the interim rule should be constructed using the “best information available,” which may be the name and address of the shipper, buying or selling agent, or seller, provided the parties to the transaction have used reasonable care to determine the identity of the true manufacturer. Two commenters suggested that in situations in which there are multiple manufacturers for a single shipment (*e.g.*, fungible goods), importers should be able to describe the manufacturer as “multi” or “multiple” on the CBP Form 7501. Two commenters recommended that CBP maintain the use of textile declarations, coupled with the former requirements for MID completion, as an alternative to the new MID requirement.

CBP's Response:

Requiring the MID to be identified on entries of textile and apparel goods to be constructed from the entity performing the origin-conferring operations better enables CBP to enforce U.S. textile laws and trade agreements as well as facilitate trade in textile and apparel products.

Regarding fungible goods, importers should use reasonable care in constructing the MID for each shipment, but, as always, should work

closely with the CBP port director in cases involving extraordinary circumstances. For example, if an importer purchases from a company with a unique inventory system, this information should be discussed with the port director to ensure that an acceptable yet accurate reporting of required information is provided.

Comment:

Two commenters indicated that it should be sufficient for CBP purposes for importers to provide the country of origin of imported textile and apparel goods on entry documents without also having to identify the manufacturer through the MID requirement. According to these commenters, CBP may request additional information regarding the manufacturer of the goods as part of a post-entry verification. One of these commenters proposed, as a practical alternative to the new MID requirement, that CBP permit importers to identify the MID of one actual producer (rather than all producers) in each separate country. As part of this proposal, CBP could request the “identity of manufacturers on a country-by-country basis, or by entry if it deems the information necessary for enforcement purposes.”

CBP's Response:

CBP wishes to remind these commenters that the basic MID requirement is not new. Importers of virtually all goods (textile and non-textile products) have been required for some time to submit a MID at the time of entry. The instructions on completing the CBP Form 7501 clearly indicate that when an entry summary covers merchandise from more than one manufacturer, the word “MULTI” should be recorded in block 13, and column 28 should reflect the MID corresponding to each line item. CBP continues to believe that the MID requirement for both textile and non-textile products is an important tool in facilitating the correct reporting of the origin of imported goods.

Comment:

Eight commenters recommended that CBP grant exceptions to the new MID requirement. Six of these commenters noted that the primary function of the new requirement (according to CBP) is to assist CBP in properly enforcing the international textile restraint agreements to which the U.S. is a party. Consistent with that purpose, these commenters asked that CBP limit the new MID requirement to products that are still subject to quantitative restraints under bilateral textile agreements or due to safeguard actions. One

commenter expressed concern that the new MID requirement may apply to a wide variety of products that are not traditionally considered textile and apparel products (e.g., valves with mesh fabric filters, jump ropes, hats, and footwear). Other commenters suggested that exemptions from the MID requirement should be granted for goods of NAFTA and CAFTA-DR countries, goods entered under subheadings 9802.00.40, .50, .80, and .90, HTSUS, goods previously imported, exported, and then returned, products integrated prior to 2000 (consistent with the November 8, 2005, Memorandum of Understanding with the People's Republic of China), as well as merchandise sold in duty-free stores.

CBP's Response:

As noted above, the objectives of the interim amendments are to assist in the enforcement of U.S. textile laws and facilitate the movement of legitimate trade in textiles into the United States. Since illegal trade may be disguised as products of virtually any country, it would be of little help in enforcing the trade laws to require the MID only for products of certain countries. CBP has discovered illegal trade from dozens of countries, including some of our free trade agreement partners. Although the scope of textile and apparel goods subject to the new MID requirement closely parallels the scope of products formerly subject to the textile declaration requirement, CBP is sympathetic to the concerns regarding the wide range of products covered by § 102.23(a). In an April 13, 2006, letter to CBP, CITA indicated that it concurred with CBP's proposal to limit the scope of products for which the MID is required to textile and apparel goods classified within Section XI of the Harmonized Tariff Schedule of the United States (HTSUS), and any 10-digit HTSUS number outside Section XI with a three-digit textile category number assigned to the specific subheading. Section 102.23(a), which previously provided that the MID requirement applied to textile or apparel products listed in § 102.21(b)(5), has been amended in this final rule document to effect the above change. This amendment excludes from the scope of the MID requirement products such as umbrellas, seat belts, parachutes, watchstraps, and doll clothing.

With respect to the commenters' requested exemption for goods classified in subheading 9802.00.40, .50, .80, or .90, HTSUS, the MID for goods classified in Chapter 98, HTSUS, must be constructed from the entity performing the origin-conferring operations only if the Statistical Notes for the specific Chapter 98 subheading require the reporting of the associated Chapter 1–97 10-digit statistical number

and that Chapter 1–97 number falls within the scope of the MID requirement set forth in amended § 102.23(a). Thus, if a good is classified in a Chapter 98 subheading and that subheading either does not require the reporting of the associated Chapter 1–97 number or the associated Chapter 1–97 number falls outside the scope of the MID requirement in § 102.23(a), then the MID may be constructed from the manufacturer, shipper, or exporter.

Comment:

Five commenters questioned the usefulness of the new MID requirement for security targeting purposes. Four of these commenters maintained that since the shipper is the last party in the supply chain to handle the product prior to export to the U.S., the identity of the shipper rather than that of the manufacturer is the better source of security targeting data. Two of the commenters pointed out that the MID is not a reliable tool in enforcement actions because of the many potential variations in MID construction—names and addresses of companies may be written and abbreviated in many different ways.

CBP's Response:

While CBP appreciates the commenters' concerns regarding security issues, the objectives of the interim regulations do not include using the MID to improve CBP's security targeting efforts. That said, it should be noted that the manufacturer generally is the last party in the supply chain to load the goods into the shipping container, which usually is just as important a consideration from a security standpoint as the last party that handles the container. In addition, CBP is aware of the potential variations in MID construction and is considering ways to address this problem. However, it is important to recognize that these variations may occur regardless of whether the MID is reported as the manufacturer or as the shipper.

Comment:

Three commenters stated that the new MID requirement for textile and apparel products should conform to the rule for all other products so as to permit the identification of either the manufacturer or the shipper. One commenter described the new requirement as "discriminatory" and questioned why the criteria for the MID for textiles is far more stringent than for other products which pose a greater threat to the health and safety of U.S. citizens, such as food or spare parts for cars or airplanes. Another commenter observed that, for trade data collection purposes, MIDs for textile and apparel products now will

represent completely different parties (manufacturers) from MID's for other products (shippers or exporters).

CBP's Response:

In many cases, importers of textile and apparel goods were already constructing the MID from the manufacturer prior to the change in the MID requirement. CBP would also note that few, if any, non-textile products have the origin restrictions that exist for textile and apparel products. CBP will carefully evaluate the results of the change in the MID requirement for textile and apparel products before determining whether the same change also should be made for all non-textile products.

Comment:

Five commenters pointed out that the instructions for block 13 ("Manufacturer I.D.") on the CBP Form 7501 provide that for "purposes of this code, the manufacturer should be construed to refer to the invoicing party or parties (manufacturers or other direct suppliers)." Therefore, according to these commenters, the new MID requirement for textile and apparel products set forth in the interim rule conflicts with the CBP Form 7501. Two of these commenters stated that this discrepancy will result in confusion and uncertainty in the trading community.

CBP's Response:

CBP agrees that there should be no discrepancy between the requirements of § 102.23(a) and the instructions for the completion of CBP Form 7501. Therefore, the instruction notice for completing CBP Form 7501 has been amended to conform to the requirements of § 102.23(a) and posted to the [cbp.gov](http://www.cbp.gov) website (see http://www.cbp.gov/xp/cgov/import/cargo_summary/cbp7501/).

Comment:

Two commenters expressed the view that CBP will have difficulty determining whether the MID for textile and apparel goods is constructed correctly, especially in the case of "home textiles" (where the seller is rarely the manufacturer) and in situations in which the seller is a trading company. One of these commenters inquired as to the type of documentation that will be required to enable CBP to enforce the new MID requirement. This commenter stated that "since there are no definitions of what is acceptable proof," there likely will be inconsistent enforcement around the country.

CBP's Response:

If CBP officials choose to verify the accuracy of MID information, these officials will request and review additional documentation and records for that purpose. What is “acceptable proof” will depend on the type of product being imported, as the origin-conferring operations will differ from product to product. For example, for most apparel, the MID reflects the firm assembling the garment, while for many home textile products such as bed sheets, the MID reflects the firm that formed the fabric. While sewing records would be appropriate in verifying MID information in the former situation, a mill certificate would be appropriate in the latter situation. We appreciate the concern for consistency and offer as guidance that, after CBP determines the origin-conferring operation for a particular textile product, it will request and review commercially available manufacturing documentation appropriate to the product involved, such as commercial invoices, sewing tickets, and spinning or mill certificates.

Comment:

Two commenters recommended that, as part of its final rule, CBP update the “Formal Entry List,” or TBT-01-036, most recently issued on August 31, 2001. Both commenters suggested that the Formal Entry List exempt all non-commercial shipments from the requirement of filing a formal entry to help clarify that the new MID requirement applies only to formal entries of commercial shipments. One of these commenters also recommended that the Formal Entry List be modified to require formal entries only for commercial shipments valued over \$250. The second commenter also suggested that the List have a single value limit, not less than the value limit set forth in 19 U.S.C. 1321. However, this commenter stated the value limit set forth in section 1321 should be increased from \$200 to \$500.

CBP's Response:

By way of background, TBT-01-036 dated August 31, 2001, is a CBP textile information issuance to the trade community that updated two lists of tariff numbers for which the submission of a formal entry is required. One list relates to tariff numbers for which a formal entry is required for commercial shipments only, regardless of value (pursuant to 19 CFR 143.22). The second list relates to tariff numbers for which a formal entry is required if the shipment is valued in excess of \$250 (pursuant to 19 CFR 143.21(a)). TBT-01-036 indicates that if a tariff number is on both lists, the requirement for formal entry regardless of value takes priority.

CBP appreciates the recommendations of these commenters regarding the Formal Entry List and is reviewing and evaluating the potential impact of the suggested changes. However, CBP does not believe that this final rule document, which is concerned with the country of origin of textile and apparel products, is the appropriate vehicle for implementing changes relating to the types of merchandise that may be entered under informal entry. Any such changes that CBP decides to pursue affecting 19 CFR Part 143 will be the subject of a separate rulemaking.

In regard to the suggestion that CBP should clarify that the new MID requirement applies only to formal entries of commercial shipments, CBP notes (as previously pointed out in this comment discussion) that § 102.23(a) has been amended in this final rule document to provide that the MID must reflect the entity performing the origin-conferring operations only with respect to commercial importations. Thus, effective upon publication of this document in the **Federal Register**, all personal use shipments subject to formal or informal entry procedures will be excepted from the MID requirement set forth in § 102.21(a), while all commercial shipments (covered by formal or informal entries) will continue to be subject to this requirement.

Comment:

A commenter stated that he was unaware of any Customs statute that requires a U.S. importer to know the manufacturer of textile and apparel products so long as the importer can demonstrate that it acted with “reasonable care” to enter, classify, and value the imported goods, as well as determine the application of other legal requirements (e.g., requirements of other government agencies affecting admissibility).

CBP's Response:

The commenter is correct that there is no customs statute that requires a U.S. importer to know the manufacturer of his/her product. However, in accordance with the direction provided by the Chairman of CITA and pursuant to section 204 of the Agricultural Act of 1956, as amended, as that authority is delegated by Executive Orders 11651 and 12475, and with direction from the Department of the Treasury, CBP is requiring the U.S. importer to provide the manufacturer's identification code for entries of textile and apparel products to help enforce trade in textile and apparel products.

Comment:

A commenter stated that the new MID requirement for textile and apparel articles is poorly defined. The commenter indicated that,

while it is reasonably easy to use the country of origin rules in § 102.21, CBP regulations, to ascertain the correct country of origin of a good, the rules are difficult to use in determining the specific “origin-conferring operation” for purposes of complying with the new MID requirement. Three examples were provided:

1. While § 102.21(c)(1) clearly defines country of origin as “the single country, territory, or insular possession in which the good was wholly obtained or produced,” the rule does not identify the origin-conferring operation (*e.g.*, growing the cotton, spinning the thread, weaving the cloth, or cutting and sewing the final product).

2. Regarding the rule set forth in § 102.21(e)(2) (“the country of origin of the good is the country, territory, or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of the following operations:...”), how is the entity performing the origin-conferring operation to be determined if more than one manufacturer performs these operations within one country? For example, if one company prints and dyes while a second company shrinks and fulls, which is the origin-conferring entity?

3. In a situation involving a single textile item consisting of fabrics made by multiple weavers, which of the weavers is the origin-conferring entity? Is it the one that wove the largest piece of fabric?

CBP’s Response:

With regard to determining the entity who performed the origin-conferring operations for particular goods, importers may request and obtain a determination from CBP on that issue, provided sufficient information is furnished to enable CBP to make such a determination. Generally, however, one can look to the rules of origin for textile and apparel products set forth in § 102.21 (or the statutory source of those rules, 19 U.S.C. 3592) or § 102.22 (for products of Israel) and discern which operation will be the origin-conferring operation for the good at issue. For instance, in the first example above, assuming that the product is one that, if it had been produced in more than one country, would derive its origin from where it is wholly assembled, the assembler would be the entity that performed the origin-conferring operation.

The second example above is more difficult. Assuming that the good is subject to the rule set forth in § 102.21(e)(2), CBP believes that the entity performing the last or final step of these origin-conferring operations would be considered the origin-conferring entity. For example, the dyeing, printing, shrinking, and fulling must all occur in a single country for origin to be conferred in that country. The

origin-conferring process is not complete until the last of the required or necessary steps is completed. Therefore, it is the last manufacturer to complete the origin-conferring steps who is to be considered the origin-conferring entity. However, the determination of the origin-conferring entity may vary depending on the specific facts involved and the product at issue. An importer should seek a ruling from CBP in cases of uncertainty of the entity to be considered the origin-conferring entity.

As for the third example, CBP is unable to determine the origin-conferring entity without more specific information regarding the “single textile item” involved.

Comment:

A commenter asked whether, in constructing a MID for companies located in amalgamated cities in Quebec (e.g., Montreal, Quebec City, Hull), an importer should use the amalgamated location or the location of any former townships within said location.

CBP's Response:

Consistent with the rules for constructing the MID set forth in the Appendix to Part 102, if the location is indeed an amalgamated city, it would be appropriate to use such a location (such as Montreal) rather than a former township.

Comment:

A commenter inquired as to whether the new MID requirement applies to marked/mutilated textile samples. The commenter noted in this regard that such goods are accorded tariff treatment based upon their classification in subheading 9811.00.60, HTSUS, and that this subheading is not within the HTSUS provisions defining the scope of textile or apparel products set forth in 19 CFR 102.21(b)(5). Another commenter recommended that the term “samples,” as used in interim § 102.24(a) be defined to exclude samples classifiable in subheading 9811.00.60, HTSUS. According to this commenter, “[t]ariff samples are not subject to duty or quantitative restraints and there is no purpose in denying the informal entry procedure to them.”

CBP's Response:

Subheading 9811.00.60 does not fall within the scope of the MID requirement set forth in amended § 102.23(a) and, because subheading 9811.00.60 does not require a 10-digit statistical reporting number, the MID for goods classified in this provision need not be constructed from the entity performing the origin-conferring operations.

Samples that are referred to in 19 CFR 102.24(a) are not intended to include samples classifiable in subheading 9811.00.60.

Comment:

A commenter recommended that the final rule include a definition of the term “manufacturer” to clarify that the manufacturer is the entity that performs the origin-conferring operations. This commenter also noted that the Memorandum of Understanding (MOU) with the People’s Republic of China includes a requirement for a visa transmission, and that a manufacturer’s identification code is one of the data elements that must appear on the visa transmission. The commenter stated that since the MID on the visa transmission may not reflect the entity performing the origin-conferring operations, there may be a discrepancy between the MID on the visa transmission and the MID on the entry documentation. In this regard, the commenter recommended that interim § 102.23(a) be amended in the final rule to clarify that such a discrepancy will not be the cause of an entry rejection.

CBP’s Response:

The first suggested clarification is unnecessary as § 102.23(a) specifically requires that the MID be “constructed from the name and address of the entity performing the origin-conferring operations.”

Pursuant to the MOU with China, an MID must be transmitted via the Electronic Visa Information System (ELVIS). The MOU closely parallels § 102.23(a) by providing that the MID is to be constructed from “the name of the entity performing the origin-conferring operations.” Therefore, while there is no reason to expect a discrepancy between the MID reported on the visa transmission and the MID reported on entry documentation, CBP recognizes that there may be instances in which the two MIDs do not match. CBP will not reject an entry if there is a discrepancy between the two MIDs if the MID identified pursuant to 102.23(a) accurately reflects the name and address of the entity performing the origin-conferring operations.

Comment:

A commenter noted that, for goods produced in the NAFTA territories, a different conclusion regarding the country of origin of a good may be reached when applying the NAFTA preference override provision in 19 CFR 102.19 rather than the rules set forth in 19 CFR 102.21. Because § 102.19 takes precedence in such a situation, the commenter recommended that the final rule clarify that, in determining the entity performing the origin-conferring operations for pur-

poses of the MID requirement, the NAFTA preference override provision in § 102.19 should be taken into consideration.

CBP's Response:

The clarification sought by the commenter is unnecessary. Section 102.21(c) clearly states that in determining the country of origin of a textile or apparel product by application of paragraphs (c)(1) through (c)(5) of § 102.21, where appropriate “the additional requirements or conditions of §§ 102.12 through 102.19 of this part” are to be applied.

Comment:

A commenter inquired regarding a situation involving sewing thread made of spun polyester fiber where the fiber is produced in China but the yarn is spun, twisted, dyed, and finished in Mexico. The commenter stated that although the sewing thread would be considered to be of Chinese origin for purposes of NAFTA, it appears that the MID should reflect the Mexican supplier since the “major transformation is done in Mexico.”

CBP's Response:

Section 102.23(a) provides that the entity performing the origin-conferring operations is to be determined by application of the rules of origin set forth in § 102.21 (or § 102.22 for products of Israel). Applying the rules in § 102.21 to the example provided, if the fiber referenced by the commenter is staple fiber, the origin of the sewing thread would be the country in which the fiber was spun into yarn, *i.e.*, Mexico. However, if the fiber referenced by the commenter is extruded filament, the origin of the thread would be the country in which the filament was extruded, *i.e.*, China. It should be emphasized that these determinations are made by application of the country of origin rules set forth in § 102.21 and not by the NAFTA preference rules set forth in General Note 12, HTSUS.

Comment:

A commenter requested clarification regarding whether post office boxes may be used in constructing the MID, and, if so, suggested that an example of a MID constructed, in part, from a P.O. Box would be helpful. This commenter also stated that there has been some confusion as to whether Kowloon should be reflected in the MID as the city. The commenter suggested that inserting an example in paragraph 7 of the Appendix to Part 102 where the factory is located in Kowloon would help eliminate the confusion.

CBP's Response:

As stated in paragraph 4 of the Appendix to Part 102, a post office box number (the first four numbers) is to be used in constructing the MID if it contains the largest number on the street address line. CBP agrees that it would be helpful to include an example in paragraph 7 of the Appendix showing the use of a P.O. Box number. With respect to whether Kowloon (in Hong Kong) should be reflected in the MID as the city, paragraph 5 of the Appendix provides that the last characters in the MID are derived from the first three letters in the city name. Paragraph 5 clearly states that, for city-states, the first three letters are to be taken from the country name and gives an example of "HON" for Hong Kong. CBP agrees with the commenter that it would be helpful to include in paragraph 7 an example of a manufacturer in Kowloon.

The following example, using both a post office box number and a manufacturer in Kowloon, has been added to the examples in paragraph 7 of the Appendix to Part 102: A.B.C. Company, 55-5 Hung To Road, P.O. Box 1234, Kowloon, Hong Kong. The MID is HKABCCOM1234HON.

Conclusion

Accordingly, based on the analysis of the comments received, CBP has determined that the interim regulations published as CBP Dec. 05-32 should be adopted as a final rule with certain changes as discussed above and as set forth below. The changes to the interim regulatory text effected by this final rule document are as follows:

1. In § 102.23(a), paragraph (a), relating to the manufacturer identification code (MID), has been revised to limit the MID requirement to commercial importations of textile and apparel goods classified within Section XI, HTSUS, and any 10-digit HTSUS number outside of Section XI with a three-digit textile category number assigned to the specific subheading; and

2. In the Appendix to Part 102, which sets forth rules for constructing the MID:

- a. Paragraph 1 has been revised to reflect the limitation in the scope of the MID requirement set forth in amended § 102.23(a); and

- b. Paragraph 7 has been revised by adding a new example that illustrates the use of a post office box number as well as a manufacturer located in Kowloon, Hong Kong.

**Inapplicability of Notice and Delayed
Effective Date Requirements**

Under the Administrative Procedure Act (“APA”) (5 U.S.C. 553), agencies generally are required to publish final amendments at least 30 days prior to their effective date. However, §§ 553(d)(1) and (d)(3) of the APA exempt agencies from the requirement of publishing notice of final rules at least 30 days prior to their effective date when a substantive rule grants or recognizes an exemption or relieves a restriction and when the agency finds that good cause exists for not meeting the advance publication requirement. As discussed earlier, the only changes to the interim regulations effected by this final rule involve limiting the scope of the MID requirement for textile and apparel products and adding a new example to clarify the proper construction of the MID. Accordingly, it has been determined that this final rule grants an exemption and relieves restrictions and that good cause exists for dispensing with a delayed effective date.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

CBP Dec. 05–32 was issued as an interim rule rather than as a notice of proposed rulemaking because CBP had determined that: (1) the interim regulations involve a foreign affairs function of the United States pursuant to § 553(a)(1) of the APA; and (2) prior public notice and comment procedures on these regulations were impracticable, unnecessary, and contrary to the public interest pursuant to § 553(b)(B) of the APA. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in these regulations (the identification of the manufacturer on CBP Form 3461 (Entry/Immediate Delivery) and CBP Form 7501 (Entry Summary)) have been previously reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1651–0024 and 1651–0022, respectively. These regulations clarify that the manufacturer to be identified on entries of textile and apparel products must consist of

the entity performing the origin-conferring operations. An agency may not conduct or sponsor and an individual is not required to respond to a collection of information unless it displays a valid OMB control number.

Signing Authority

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

List of Subjects

19 CFR Part 102

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

AMENDMENTS TO THE REGULATIONS

Accordingly, the interim rule amending Parts 12, 102, 141, 144, 146, and 163 of the CBP regulations (19 CFR Parts 12, 102, 141, 144, 146 and 163), which was published at 70 FR 58009 on October 5, 2005, is adopted as a final rule with certain changes as discussed above and set forth below.

PART 102 – RULES OF ORIGIN

1. The general authority citation for Part 102 continues to read as follows:

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

2. Section 102.23 is amended by revising paragraph (a) to read as follows:

§ 102.23 Origin and manufacturer identification

(a) *Textile or apparel product manufacturer identification.* All commercial importations of textile or apparel products must identify on CBP Form 3461 (Entry/Immediate Delivery) and CBP Form 7501 (Entry Summary), and in all electronic data transmissions that require identification of the manufacturer, the manufacturer of such products through a manufacturer identification code (MID) constructed from the name and address of the entity performing the origin-conferring operations pursuant to § 102.21 or § 102.22 of this part, as applicable. The code must be accurately constructed using the methodology set forth in the Appendix to this part, including the use of the two-letter International Organization for Standardization

(ISO) code for the country of origin of such products. When a single entry is filed for products of more than one manufacturer, the products of each manufacturer must be separately identified. Importers must be able to demonstrate to CBP their use of reasonable care in determining the manufacturer. If an entry filed for such merchandise fails to include the MID properly constructed from the name and address of the manufacturer, the port director may reject the entry or take other appropriate action. For purposes of this paragraph, “textile or apparel products” means goods classifiable in Section XI, Harmonized Tariff Schedule of the United States (HTSUS), and goods classifiable in any 10-digit HTSUS number outside of Section XI with a three-digit textile category number assigned to the specific sub-heading.

* * * * *

3. The Appendix to Part 102 is amended by revising paragraph 1 and by adding a new example at the end of paragraph 7. Revised paragraph 1 and the addition to paragraph 7 read as follows:

**Appendix To Part 102-Textile and Apparel
Manufacturer Identification**

Rules for constructing the manufacturer identification code (MID)

1. Pursuant to § 102.23(a) of this part, all commercial importations of textile or apparel products, as defined in that paragraph, must identify on CBP Form 3461 (Entry/Immediate Delivery) and CBP Form 7501 (Entry Summary), and in all electronic data transmissions that require identification of the manufacturer, the manufacturer of such products through a manufacturer identification code (MID) constructed from the name and address of the entity performing the origin-conferring operations. The MID may be up to 15 characters in length, with no spaces inserted between the characters.

* * * * *

7. * * *A.B.C. COMPANY, 55–5 Hung To Road, P.O. Box 1234, Kowloon, Hong Kong; HKABCCOM1234HON.

Dated: March 14, 2011

ALAN BERSIN
Commissioner
U.S. Customs and Border Protection

Timothy E. Skud
Deputy Assistant Secretary of the Treasury

AGENCY INFORMATION COLLECTION ACTIVITIES:**Record of Vessel Foreign Repair or Equipment Purchase**

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651-0027.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Record of Vessel Foreign Repair or Equipment Purchase (CBP Form 226). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 3151) on January 19, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 21, 2011.

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

SUPPLEMENTARY INFORMATION:

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

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Record of Vessel Foreign Repair or Equipment Purchase

OMB Number: 1651-0027

Form Number: CBP Form 226

Abstract: 19 U.S.C. 1466(a) provides for a 50 percent ad valorem duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel registered in the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at http://forms.cbp.gov/pdf/CBP_Form_226.pdf.

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours based on the number of responses filed with CBP in 2010. There is no change to the information being collected.

Type of Review: Extension (with change)

Affected Public: Businesses

Estimated Number of Respondents: 100

Estimated Number of Responses per Respondent: 11

Estimated Number of Total Annual Responses: 1,100

Estimated Time per Response: 45 minutes

Estimated Total Annual Burden Hours: 825

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

Dated: March 17, 2011

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

[Published in the Federal Register, March 22, 2011 (76 FR 15989)]