

U.S. Customs and Border Protection



8 CFR Part 100

19 CFR Part 101

[Docket No. USCBP-2011-0032]

RIN 1651-AA90

OPENING OF BOQUILLAS BORDER CROSSING AND UPDATE TO THE CLASS B PORT OF ENTRY DESCRIPTION

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking proposes to create a border crossing in Big Bend National Park to be called Boquillas. The Boquillas crossing would be situated between Presidio and Del Rio, Texas. U.S. Customs and Border Protection (CBP) and the National Park Service plan to partner on the construction of a joint use facility in Big Bend National Park where the border crossing would operate. This NPRM proposes to designate the Boquillas border crossing as a “Customs station” for customs purposes and a Class B port of entry for immigration purposes.

This NPRM also proposes to update the description of a Class B port of entry to reflect current border crossing documentation requirements.

DATES: Comments must be received on or before December 27, 2011.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2011-0032.

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

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

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

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, CBP Office of Field Operations, telephone (202) 344–3003.

SUPPLEMENTARY INFORMATION:

Public Participation

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

Background

The term “port of entry” is used in the Code of Federal Regulations (CFR) in title 19 for customs purposes and in title 8 for immigration purposes. Concerning customs purposes, CBP operates Customs

ports of entry,¹ service ports,² and “Customs stations”³ listed and described in part 101 of the CBP regulations (19 CFR part 101). Section 101.3 of the CBP regulations (19 CFR 101.3) lists the Customs ports of entry and service ports. Section 101.4 of the CBP regulations (19 CFR 101.4) lists the “Customs stations” and the supervisory port of entry for each station. In addition, for immigration purposes, 8 CFR 100.4(a) lists ports of entry for aliens arriving by vessel and land transportation. These ports are listed according to location by districts and are designated as Class A, B, or C, which designates which aliens may use the port. As explained in detail in the section of this document entitled “Proposed Revision of Class B Port of Entry Description,” we are proposing to revise the description of a Class B port of entry so that it conforms to recent changes to documentary requirements.⁴

This notice of proposed rulemaking (NPRM) proposes to establish a border crossing in Big Bend National Park where U.S. citizens and certain aliens would be able to cross into the United States. Before 2002, a border crossing, called Boquillas, was open in the national park. The new border crossing would be located at the site of the historic crossing and would also be called the Boquillas border crossing. This NPRM proposes to designate the Boquillas border crossing as a Class B port of entry and a “Customs station” under the supervisory port of entry of Presidio, Texas. Presidio, Texas is a Customs port of entry listed in section 101.3 of the CBP regulations (19 CFR 101.3). For ease of reference, this NPRM refers to the proposed Boquillas port of entry/“Customs station” in this document as a border crossing.

¹ A port of entry is defined in 19 CFR 101.1 as “any place designated by Executive Order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a Customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws.” The authority of the Secretary of the Treasury referred to in this definition has been transferred to the Secretary of Homeland Security. Sections 403(l) and 411 of the Homeland Security Act of 2002 (“the Act,” Pub. L. 107–296, 6 U.S.C. 203(l), 211) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security.

² A service port is defined in 19 CFR 101.1 as “a Customs location having a full range of cargo processing functions, including inspections, entry, collections, and verification.”

³ A “Customs station” is defined in 19 CFR 101.1 as “any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President’s Message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of Customs and navigation laws of the United States.”

⁴ Class A ports of entry are those designated for all aliens. Class C ports of entry are designated only for aliens arriving as crewmen, as the term is defined by the Immigration and Nationality Act with respect to vessels.

History of Big Bend National Park

Sixty-five years ago, the Presidents of the United States and Mexico corresponded about creating Big Bend National Park in the United States, wherein they envisioned the conservation of the shared ecosystems on both sides of the Rio Grande. Mexico later established the Cañon de Santa Elena and Maderas del Carmen protected areas in Chihuahua and Coahuila, which are adjacent to Big Bend. In 1935, the U.S. Congress authorized Big Bend National Park to preserve and protect a representative area of the Chihuahuan Desert along the Rio Grande for the benefit and enjoyment of present and future generations. The park, formally established in June 1944, encompasses more than 800,000 acres in southwest Texas. The Rio Grande runs through the park and forms part of the international boundary between Mexico and the United States. The park includes rich biological and geological diversity, cultural history, recreational resources, and outstanding opportunities for binational protection of our shared natural and cultural heritage.

Prior to 2002, visitors to the park could cross the Rio Grande to eat, buy goods, and experience the villages near the border, such as Boquillas, Mexico. In May 2002, following September 11, 2001 (9/11), the Boquillas crossing was closed until appropriate security measures could be implemented. Since 2002, there has been no authorized international crossing point within Big Bend National Park. The nearest border crossing currently is located in the port of entry of Presidio, Texas, located approximately 100 miles west. Due to the current situation, park staff and visitors of Big Bend National Park who wish to travel to the protected areas of Mexico directly across from the park must drive several hours to depart and reenter the United States through the nearest port of entry at Presidio, Texas.

United States-Mexico Joint Presidential Statement

On May 19, 2010, President Obama and President Calderón issued a joint statement pledging both countries' commitment to protecting wild lands on opposite sides of the Rio Grande, noting the long history of bilateral cooperation in the conservation of natural and cultural resources. The Presidents recognized that the Big Bend National Park and Rio Grande Wild and Scenic River in the United States, along with the Protected Areas of Maderas del Carmen, Cañon de Santa Elena, Ocampo, and Río Bravo del Norte in Mexico, together comprise one of the largest and most significant ecological systems in North America. To preserve this region of extraordinary biological diversity, they expressed their support for the U.S. Department of the Interior and the Secretariat of Environment and Natural Resources

of Mexico to work through appropriate national processes to recognize and designate Big Bend-Río Bravo as a natural area of binational interest. The Presidents noted that increased cooperation in these protected areas would restrict development and enhance security in the region and within this fragile desert ecosystem. The joint Presidential statement encourages an increased level of cooperation between the two countries.

Based on this joint Presidential statement, on January 6, 2011, the Commissioner of CBP announced that CBP plans to re-establish a border crossing at Boquillas. The ability to enter the United States from within the protected areas would foster the Presidents' goals by supporting visitor access to these unique areas.

Proposed Boquillas Border Crossing

This NPRM proposes to create a border crossing in Big Bend National Park where U.S. citizens and certain aliens with proper documentation would be able to enter the United States from Mexico. The Boquillas border crossing would fill the void of a long stretch of border between Presidio and Del Rio, Texas where there is currently no authorized international border crossing and would facilitate travel within the Big Bend-Río Bravo region. This NPRM proposes to designate the Boquillas border crossing as a "Customs station" for customs purposes and a Class B port of entry for immigration purposes. Under this NPRM, CBP is also proposing to update the description of a Class B port of entry to reflect current border crossing document requirements. The Boquillas border crossing would fit within the proposed new description of a Class B port of entry.

Big Bend National Park is one of the most biologically diverse regions in the world and represents an area of binational interest. A border crossing would support park rangers and scientists on both sides of the border and aid in the joint protection of shared wildlife such as black bear and cougars. The partnership with Mexico would add to the cooperative environment that has developed for the protection of wildlife and encourage travel to this biologically diverse region.

Coordination With the National Park Service

The National Park Service (NPS) within the U.S. Department of the Interior is working with CBP on the proposed border crossing. Efforts to establish this new border crossing were set in motion by discussions between the White House, the U.S. Department of the Interior, and the Department of Homeland Security. CBP and NPS plan to collaborate on the construction of a joint use facility in Big

Bend National Park where the border crossing will operate. NPS would provide the needed land and would construct the facility. NPS also would provide parking, an access trail, and a landing point for the cross-border boats. Additionally, NPS has prepared an environmental analysis, as required by the National Environmental Policy Act (NEPA), to determine the impact the new facility will have on the environment.

The new facility would include the infrastructure necessary to operate a border crossing, functioning as a “Customs station” and a Class B immigration port of entry. The facility would also accommodate the NPS functions that support the ability to manage visitor use of the border crossing, and would provide public restrooms, an information lobby, and a waiting area. NPS plans to provide staffing for visitor contact during normal park operational hours.

Boquillas Border Crossing Operations

The proposed Boquillas border crossing would be a “Customs station” under the supervisory port of entry of Presidio, Texas, which is a Customs port of entry. 19 CFR 101.3. The site of the border crossing would be in the southeast portion of Big Bend National Park, approximately one mile northeast of Rio Grande Village. The site is adjacent to the Rio Grande just outside of the floodplain and would be accessible from Boquillas Canyon Road, a paved road leading from Rio Grande Village to the Boquillas Canyon Trailhead. CBP Border Patrol agents and NPS law enforcement currently work onsite within the Big Bend National Park boundaries and would provide a law enforcement presence and response as needed. The border crossing would only be open during daylight hours.

The Boquillas border crossing would allow U.S. citizens and certain aliens with appropriate lawful documentation to enter the United States from Mexico. We anticipate that park visitors, park staff, and researchers would use the border crossing. As there is no bridge across the Rio Grande (the international border) to support vehicular traffic, travelers would reach the building on foot after crossing the river on their own or by ferry.

Traveler Inspection at the Boquillas Border Crossing

CBP intends to use a combination of staffing and technology solutions to operate the border crossing. Remote technology would assist CBP in maintaining security and verifying the identity of those entering the United States, while also ensuring that they possess proper documentation to do so. Kiosks electronically connected to the El Paso port of entry would enable CBP officers in El Paso to remotely process

travelers at the Boquillas border crossing.⁵ CBP officers in El Paso would be in contact with Border Patrol agents within the park, who could respond when a physical inspection is required. CBP officers would assist onsite as operational needs dictate. CBP would install a 24-hour surveillance camera at the Boquillas crossing to monitor activity. CBP will process and clear all persons who use the Boquillas border crossing to enter the United States.

The Boquillas border crossing would service only pedestrians visiting Big Bend National Park and Mexican Protected Areas—not import business. Therefore, CBP will not process cargo, commercial entries, or vehicles at Boquillas. Persons using the Boquillas border crossing would only be permitted to bring limited merchandise into the United States; CBP would only process items exempt from duties and taxes under 19 CFR 10.151. This provision generally covers importations that do not exceed \$200 in value.⁶ All such items must comply with all applicable regulations, including all relevant Animal and Plant Health Inspection Service restrictions. Persons using the Boquillas crossing must also comply with Federal wildlife protection laws and U.S. Fish and Wildlife Service wildlife import/export regulations.

Proposed Revision of Class B Port of Entry Description

The current description of a Class B port of entry in 8 CFR 100.4(a) refers to aliens admissible without documents under documentary waivers found in 8 CFR part 212. These waivers, however, were generally eliminated by the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law No. 108–458, § 7209, 118 Stat. 3638, 3823, as amended.

Pursuant to IRTPA, DHS and the Department of State (DOS) issued two rules implementing the Western Hemisphere Travel Initiative (WHTI), which require U.S. citizens and nonimmigrant aliens from Bermuda, Canada, and Mexico to present certain documents when entering the United States from within the Western Hemisphere.⁷ The WHTI rules amended, among other sections of the Code of Federal Regulations, 8 CFR 212.0, 212.1, and 235.1, pertaining to

⁵ Although Boquillas would be under the supervision of the Presidio port of entry, the kiosks would be connected to the El Paso port of entry because El Paso has the appropriate facilities for remote processing.

⁶ Under 19 CFR 10.151, importations that do not exceed \$200 in value are generally exempt from duty and taxes. Such merchandise shall be entered under the informal entry procedures. *See* 19 CFR 128.24(d).

⁷ On November 24, 2006, DHS and DOS issued a joint final rule, effective on January 23, 2007, that implemented WHTI at U.S. air ports of entry. *See* 71 FR 68412. On April 3, 2008, DHS and DOS issued another joint final rule, effective on June 1, 2009, that implemented WHTI at U.S. land and sea ports of entry. *See* 73 FR 18384.

documentary requirements for nonimmigrants and the inspection of persons applying for admission to enter the United States.

Prior to the implementation of WHTI, nationals of Bermuda and Canada, and certain nationals of Mexico, were exempt from documentary requirements if entering the United States from within the Western Hemisphere. The WHTI final rules amended the relevant sections of the regulations (in parts 212 and 235) to provide that these travelers are no longer admissible without documents and must present a document compliant with WHTI when seeking to enter the United States.

As a result of the changes implemented by WHTI, the description of Class B ports of entry in 8 CFR 100.4(a) is now outdated. CBP regulations currently describe Class B ports as follows:

Class B means that the port is a designated Port-of-Entry for aliens who at the time of applying for admission are lawfully in possession of valid Permanent Resident Cards or valid non-resident aliens' border-crossing identification cards or *are admissible without documents under the documentary waivers contained in part 212 of this chapter.* (emphasis added)

The aliens who were previously admissible without documents pursuant to 8 CFR part 212 were nonimmigrant aliens who were nationals of Bermuda or Canada or certain nationals of Mexico. In general, these persons must now comply with WHTI documentary requirements as set forth in parts 212 and 235. Thus, this NPRM proposes amending the description of a Class B port of entry to delete the outdated phrase "are admissible without documents under the documentary waivers contained in part 212 of this chapter" and replace it with language that is more precise and consistent with WHTI requirements.

The WHTI rules did not remove the exemption from documentary requirements for International Boundary and Water Commission (IBWC) workers. *See* 8 CFR 212.1(c)(5). Therefore, employees, who are involved either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with a 1944 treaty between the United States and Mexico regarding the functions of the IBWC, and entering the United States temporarily in connection with such employment, continue to be exempt from WHTI document requirements. Under the proposed Class B description, these persons will continue to be admissible without documents at a Class B port of entry.

The proposed Class B description is set forth below:

Class B means that the port is a designated Port-of-Entry for aliens who at the time of applying for admission are exempt from document

requirements by section 212.1(c)(5) of this chapter or who are lawfully in possession of valid Permanent Resident Cards, and nonimmigrant aliens who are citizens of Canada or Bermuda or nationals of Mexico and who at the time of applying for admission are lawfully in possession of all valid documents required for admission as set forth in section 212.1(a) and (c) and 235.1(d) and (e) of this chapter and are admissible without further arrival documentation or immigration processing.

The proposed Class B description includes other technical and clarifying revisions that will make the regulation easier for the public to understand. Specifically, one change under the proposed description would remove reference to “valid non-resident aliens’ border-crossing cards” from the Class B description. This reference would be redundant if included in the new description because border-crossing cards are one of the acceptable WHTI compliant documents listed in section 212.1(c). Therefore, it is unnecessary to specify border-crossing cards in the Class B description. Moreover, CBP will continue to accept these border-crossing cards at Class B ports of entry under the new description.

Another change under the proposed Class B description expressly would permit Mexican nationals in lawful possession of valid WHTI-compliant documents, including border-crossing cards, to use Class B ports of entry. The current Class B description does not specify that Mexican nationals possessing WHTI-compliant documents, other than a border-crossing card, may use Class B ports of entry. This change will align the Class B description with current WHTI requirements.

Finally, CBP notes that while Class A ports are designated for all aliens and designed to provide full processing at the border, Class B ports are designed for processing a more limited segment of those aliens entering the United States. Class B ports generally provide limited functions and are not now and were not previously intended to provide full service processing, including issuing documents (such as a Form I-94) at the border. Therefore, the proposed description includes language to clarify that the aliens listed in the Class B description must be admissible without further arrival documentation or immigration processing.

Proposed Amendments to the Regulations

If the proposed opening of the Boquillas border crossing is adopted, the list of ports of entry in 8 CFR 100.4(a) and the list of “Customs stations” in 19 CFR 101.4(c) will be amended to reflect this change.

Authority

These changes are proposed pursuant to 5 U.S.C. 301, 6 U.S.C. 112, 203 and 211, 8 U.S.C. 1103, 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458), and 19 U.S.C. 1, 58b, 66 and 1624.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866, as amended by Executive Order 13563, requires Federal agencies to assess the costs and benefits of regulatory actions as a means to improve regulatory decision making. This NPRM is not an “economically significant” rulemaking action under Executive Order 12866, because it will not result in the expenditure of more than \$100 million in any one year. This NPRM, however, is a significant regulatory action under Executive Order 12866; therefore, the Office of Management and Budget has reviewed this regulation.

The opening of the Boquillas border crossing will entail constructing a small inspection facility and installing hardware that meets the technical specifications for land ports of entry. NPS will construct a building large enough to house both a small visitor center and the CBP inspection station. This construction is to be funded entirely by NPS and is expected to cost \$2.1 million,⁸ which accounts for special construction needed to address the remoteness of the facility. CBP will be responsible for procuring and installing all equipment needed for its operation, which includes inspection kiosks, surveillance equipment, and an agricultural waste disposal system. This equipment will cost \$1,577,000 the first year, which includes installation, hardware, connectivity, and security.⁹ We estimate that the facility will cost \$200,000 each year for operation and maintenance; an estimated \$195,000 will be incurred by CBP and \$5,000 by NPS.¹⁰ NPS will also staff the facility with a combination of paid seasonal and volunteer personnel. NPS estimates that 0.5 paid Full-Time Equivalents (FTEs) will be needed to staff the new facility at a cost of approximately \$17,800 per year.¹¹ The total cost of opening the Bo-

⁸ Source: National Park Service Predesign Study—Boquillas Crossing Visitor Contact/Border Station. January 2011.

⁹ Source: CBP Office of Information Technology estimate on March 4, 2011.

¹⁰ Sources: CBP Office of Information Technology estimate on March 4, 2011 and National Park Service estimate on March 24, 2011.

¹¹ NPS assumes the facility will be staffed seasonally for approximately half the year with a GS–05 step 5 employee (\$35,489 annual salary). Email communication with Big Bend park management staff on March 24, 2011. Salary information: <http://www.opm.gov/oca/l1tables/html/RUS.asp>, accessed March 24, 2011. Calculation: 0.5 FTE × \$35,489 = \$17,745, rounded to \$17,800. This calculation does not include benefits, because the facility will be staffed by part-time seasonal employees.

quillas border crossing is estimated to be \$3.7 million in the first year and \$217,800 in subsequent years, all of which will be incurred by the U.S. government.

NPS anticipates that 15,000 to 20,000 people will use the Boquillas border crossing in the first year.¹² Most of this traffic is expected to be U.S. citizens who will benefit from visiting the town of Boquillas del Carmen on the Mexican side of the border for food, souvenirs, and a unique cultural experience. The number of border crossers may grow over time as NPS continues to work with the Mexican government to develop ecotourism and sports and recreational opportunities. Because of the absence of data on the number of future border crossers and their willingness to pay for these experiences, we are not able to quantify the benefit of the availability of these experiences to the U.S. economy.

In addition to opening a new border crossing at Boquillas, this NPRM would revise the definition of a Class B port to make the admissibility documents allowed at a Class B port consistent with WHTI. The costs and benefits of obtaining WHTI-compliant documents were included in the Final Rule establishing WHTI.¹³ This NPRM would not result in any additional costs or benefits.

Regulatory Flexibility Act

This section examines the impact of the NPRM on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This NPRM does not directly impact small entities because individuals will be affected by the NPRM and individuals are not considered small entities. Thus, we believe that this NPRM will likely not have a significant economic impact on a substantial number of small entities. We welcome any comments regarding this assessment. If we do not receive any comments with information that shows this NPRM would have a significant economic impact on a substantial number of

¹² *Source:* Telephone communication with Big Bend park management staff on January 10, 2011.

¹³ The Regulatory Assessments for the April 2008 final rule for WHTI requirements in the land environment can be found at <http://www.regulations.gov>, document numbers USCBP-2007-0061-0615 and USCBP-2007-0061-0616.

small entities, we will certify that this NPRM will not have a significant economic impact on a substantial number of small entities at the final rule stage.

Executive Order 13132

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

The National Environmental Policy Act of 1969

DHS and CBP, in consultation with NPS within the Department of Interior, have been reviewing the potential environmental and other impacts of this proposed rule in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and DHS Management Directive 023-01, Environmental Planning Program of April 19, 2006.

NPS prepared an environmental assessment (EA) that examines the effects on the natural and human environment associated with the proposed construction and operation of a visitor station and establishment of a Class B port of entry on the Rio Grande between the United States and Mexico within Big Bend National Park. The NPS EA encompasses all components of the Boquillas border crossing, including CBP operations of the port of entry. On April 29, 2011, NPS posted a notice of availability of the EA on NPS's Planning, Environment and Public Comment (PEPC) Web site at <http://parkplanning.nps.gov/bibe> and described how the public may provide comments on the EA. On June 28, 2011, NPS issued a Finding of No Significant Impact (FONSI) concluding that the proposed activities would not result in a significant impact to the human and natural environment.

In accordance with NEPA, CBP has carefully reviewed the EA developed by NPS and has determined that it accurately considers all potential impacts of the project; therefore, CBP intends to adopt the EA developed by NPS and issue a FONSI. CBP has posted the EA prepared by NPS and a Draft FONSI on the CBP Web site at <http://www.cbp.gov> and in the docket for this rulemaking at <http://www.regulations.gov> and solicits public comment. Members of the public may submit comments via email to CBP_EnvironmentalPrograms@cbp.dhs.gov or via mail to U.S. Customs

and Border Protection, Environmental Planning Branch, 1331 Pennsylvania Ave. NW., Suite 1220, Washington, DC 20229. Please reference “Boquillas” in the subject line. CBP will accept comments on these documents until December 27, 2011.

Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of this Customs station is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this notice of proposed rule-making may be signed by the Secretary of Homeland Security (or her delegate).

List of Subjects

8 CFR Part 100

Organization and functions (Government agencies).

19 CFR Part 101

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

Amendments to the Regulations

For the reasons stated in the preamble, we propose to amend 8 CFR part 100 and 19 CFR part 101 as set forth below.

Title 8—Aliens and Nationality

CHAPTER I—DEPARTMENT OF HOMELAND SECURITY

PART 100—STATEMENT OF ORGANIZATION

1. Revise the authority citation for part 100 to read as follows:

Authority: 8 U.S.C. 1103; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2.

2. Amend § 100.4(a) as follows:

a. Revise the fifth sentence of § 100.4(a) as set forth below.

b. Under the heading “District No. 15—El Paso, Texas,” add the subheading, “*Class B*” and add “Boquillas, TX” under the new “*Class B*” heading.

§ 100.4 Field Offices

(a) * * * Class B means that the port is a designated Port-of-Entry for aliens who at the time of applying for admission are exempt from document requirements by § 212.1(c)(5) of this chapter or who are lawfully in possession of valid Permanent Resident Cards, and non-

immigrant aliens who are citizens of Canada or Bermuda or nationals of Mexico and who at the time of applying for admission are lawfully in possession of all valid documents required for admission as set forth in §§ 212.1(a) and (c) and 235.1(d) and (e) of this chapter and are admissible without further arrival documentation or immigration processing. * * *

Title 19—Customs Duties

**CHAPTER I—U.S. CUSTOMS AND BORDER PROTECTION,
DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT
OF THE TREASURY**

PART 101—GENERAL PROVISIONS

3. The general authority citation for part 101, and the sectional authority citation for §§ 101.3 and 101.4, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.4 [Amended]

4. In § 101.4(c), under the state of Texas, add “Boquillas” in alphabetical order to the Customs station column and add “Presidio.” to the corresponding Supervisory port of entry column.

JANET NAPOLITANO,
Secretary.

[Published in the Federal Register, October 28, 2011 (76 FR 66862)]



DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 102, 123, 128, 141, 143, 145, and 148

[USCBP-2011-0042]

RIN 1515-AD69

**INFORMAL ENTRY LIMIT AND REMOVAL OF A FORMAL
ENTRY REQUIREMENT**

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend provisions in Customs and Border Protection (CPB) regulations to increase the informal entry limit from \$2,000 to \$2,500. Section 662 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act raised the statutory limit by which the Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of, among other things, imported merchandise when the aggregate value of the shipment does not exceed an amount specified, but not greater than \$2,500. The current limit of \$2000 was established in 1998 and while that dollar amount has been unchanged, inflation over the intervening years has reduced the value of that amount in real terms. Consequently, CBP proposes to raise the current informal entry amount to its maximum statutory limit in response to inflation that has occurred and thereby to reduce the administrative burden on importers and other entry filers. Moreover, CBP proposes to remove the language requiring formal entry for certain articles, because with the elimination of absolute quotas under the Agreement on Textiles and Clothing, CBP no longer needs to require formal entries for these articles. This document also makes non-substantive editorial and nomenclature changes.

DATES: Comments must be received on or before December 27, 2011

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

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FOR FURTHER INFORMATION CONTACT: Cynthia F. Whittenburg, Trade Facilitation and Administration Division, Office of International Trade, Customs and Border Protection, (202) 863-6512.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

All merchandise imported into the customs territory of the United States is subject to entry and clearance procedures. Section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), provides that the “importer of record” or his authorized agent shall: (1) Make entry for imported merchandise by filing such documentation or information as is necessary to enable CBP to determine whether the merchandise may be released from CBP custody; and (2) complete the entry by filing with CBP the declared value, classification and rate of duty applicable to the merchandise and such other documentation or other information as is necessary to enable CBP to properly assess duties on the merchandise and collect accurate statistics with respect to the merchandise and determine whether any other applicable requirement of law is met. Part 142 of the Code of Federal Regulations (19 CFR part 142) implements section 484 of the Tariff Act, as amended, and prescribes procedures applicable to most CBP entry transactions. These procedures are referred to as formal entry procedures and generally involve the completion and filing of one or more CBP forms (such as CBP Form 7501, Entry/Entry Summary, which contains detailed information regarding the import transaction), or their electronic equivalent, as well as the filing of commercial documents

pertaining to the transaction. As originally enacted, section 498, Tariff Act of 1930, as amended (subsequently codified at 19 U.S.C. 1498), authorized the Secretary of the Treasury to prescribe rules and regulations for the declaration and entry of, among other things, imported merchandise when the aggregate value of the shipment did not exceed an amount specified, but not greater than \$250. Regulations implementing this aspect of section 498 of the Tariff Act, as amended, are contained in Subpart C of part 143 of the CFR (19 CFR part 143) which is entitled “Informal Entry.” Section 662 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8, 1993) amended section 498 by increasing to \$2,500 the maximum dollar amount that the Secretary could prescribe by regulation for purposes of the declaration and entry of merchandise.

In 1998, in accordance with 19 U.S.C. 1498, as amended, CBP raised the informal entry limit to \$2,000. Currently, part 143 of title 19 of the CFR (19 CFR part 143) still reflects the \$2,000 informal entry limit. In this document CBP proposes to increase the informal entry amount to its statutory maximum limit of \$2,500 in response to inflation. The informal entry procedures set forth in subpart C of part 143 are less burdensome than the formal entry procedures prescribed in part 142 of the regulations. By increasing the limit by \$500, CBP believes that this proposed change will reduce the overall administrative burden on importers and other entry filers by expanding the availability of the simplified informal entry procedures. In fact, CBP has determined that increasing the informal entry limit to \$2,500 will save the trade community approximately \$11 million in merchandise processing fees. Accordingly, this document proposes to amend part 143 of the CBP regulations to increase the informal entry limit from \$2,000 to \$2,500, and to amend any other regulatory provisions that reflect the informal entry limit.

However, 19 CFR 143.22, provides that CBP may require a formal consumption or appraisement entry for any merchandise if deemed necessary for: (a) Import admissibility enforcement purposes, (b) revenue protection, or (c) the efficient conduct of Customs business.

CBP also proposes to remove language stating that formal entry is required for certain “articles valued in excess of \$250” that are classified in specified parts of the Harmonized Tariff Schedule of the United States (HTSUS). We propose to remove this language because CBP no longer needs to require formal entries for these articles due to the elimination of absolute quotas and visa requirements for textile articles.

Consequently, CBP proposes to remove paragraph (a) of section 102.24 of title 19 of the CFR, which requires the use of a formal entry and visa or export license for certain shipments of textile or apparel products due to the elimination of quotas formerly established under the Agreement on Textiles and Clothing.

This document also proposes to amend section 143.21(c) of the CBP regulations to correct an erroneous cross-reference.

Explanation of Proposed Amendments

This document proposes to increase the informal entry limit by amending title 19 of the CFR part 143, which establishes the informal entry limit, and parts 10, 24, 123, 128, 141, 145, and 148, which reflect the current informal entry limit. Specifically, this document proposes to replace any references made to “\$2,000”, when pertaining to the informal entry limit, with “\$2,500”.

To eliminate the language stating that formal entry is required for “articles valued in excess of \$250” that are classified in certain parts of the Harmonized Tariff Schedule of the United States (HTSUS), CBP proposes to amend title 19 of the CFR parts 141, 143, and 148.

CBP also proposes to remove paragraph (a) of section 102.24 of title 19 of the CFR due to the elimination of visa programs for textile and apparel imports.

CBP further proposes to amend section 143.21(c) of title 19 of the CFR to correct an erroneous cross-reference.

In addition, this document proposes non-substantive amendments to the CFR to reflect nomenclature changes effected by the transfer of the agency to the Department of Homeland Security and other minor grammatical and editorial edits.

Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. CBP has prepared the following analysis to help inform stakeholders of the potential impacts of this proposed rule.

CBP requires importers to submit a completed CBP Form 7501 or its electronic equivalent with each entry of merchandise for consumption. Merchandise valued over \$2,000 requires a formal entry—a surety bond is required and the importer may take possession of the merchandise before duties and taxes are assessed. Currently, merchandise valued below \$2,000 may be entered informally, with no bond requirement and duties and taxes are assessed immediately, but may require a formal entry at a Port Director’s discretion. If finalized, this regulation will increase the ceiling for which merchandise may qualify for an informal entry from \$2,000 to \$2,500.

Unless exempt under a free trade agreement and in addition to any duty or tax owed, merchandise requiring a formal entry is subject to a 0.21 percent ad valorem merchandise processing fee, which may be no greater than \$485 and no less than \$25. Any merchandise currently requiring a formal entry with a value of \$2,000 to \$2,500 is subject to the minimum \$25 merchandise processing fee. Entries considered informal entries as a result of the change in the threshold would now be subject to only a \$2 merchandise processing fee (assuming they are filed electronically). In FY 2009, CBP processed 476,081 formal entries that were not subject to free trade agreements and were subject to the \$25 merchandise processing fee that were valued between \$2,000 and \$2,500. Consequently, raising the informal entry limited to \$2,500 would result in a loss of approximately \$12 million in revenues if the \$25 merchandise processing fee were not collected for these entries ($476,081 \times \$25 = \11.9 million). Revenues would now be approximately \$1 million ($476,081 \times \$2 = \0.95 million), thus the net loss in fees collected would be approximately \$11 million (\$12 million — \$1 million).

Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The proposed regulation, if finalized, will increase the ceiling for informal entries from \$2,000 to \$2,500. Given the available data, we are not able to estimate the number of small entities potentially affected by this regulation because we are not able to discern whether these informal entries were made by an individual (who would not be

considered a small business) or a commercial entity. However, given the number of informal entries filed in FY 2009, the number of entities affected is believed to be significant.

Our analysis, however, demonstrates that this regulation would create a benefit through cost savings to filers of approximately \$11 million a year. Thus, to the extent that this rule affects small entities, these entities would experience a small cost savings on a per-transaction basis. The total cost savings per entity would be based on its annual transaction levels. Conversely, brokers may be indirectly affected by this rule if they provide services to affected importers. Again, indirect impacts are driven by the number of transactions. CBP believes that this rule will not have a significant economic impact on a substantial number of small entities. However, CBP welcomes any comments regarding this assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collection of information on the Entry Summary and Informal Entry are approved by OMB under collection 1651-0022.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Customs and Border Protection, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Office of International Trade, U.S Customs and Border Protection, 799 9th Street NW., (Mint Annex), Washington, DC 20229-1179. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Signing Authority

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

List of Subjects

19 CFR Part 10

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 24

Customs duties and inspection, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 102

Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 123

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 128

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 143

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 148

Customs duties and inspection, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, parts 10, 24, 102, 123, 128, 141, 143, 145, and 148 of title 19 of the CFR (19 CFR parts 10, 24, 102, 123, 128, 141, 143, 145, and 148) are proposed to be amended as set forth below.

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

1. The general authority citation for part 10 continues to read as follows:

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

* * * * *

§ 10.1 [Amended]

2. In § 10.1:

a. Introductory paragraph (a) is amended by removing the word “shall” and adding in its place the word “must”, and by removing the sum “\$2,000” and adding in its place the sum “\$2,500”;

b. Paragraph (a)(1) is amended by removing the first two numerals of the year “19__” and adding in its place the numerals “20__”;

c. Paragraph (a)(2) is amended by removing the word “shall” and adding in its place the word “must”;

d. Paragraph (b) is amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”;

e. Paragraph (e) is amended by removing the word “shall” and adding in its place the word “will”;

f. Paragraph (f) is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;

g. Paragraph (g)(1) is amended by:

i. Removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

ii. Removing the word “shall” the first time that it appears and adding in its place the word “must”; and

iii. Removing the word “shall” in the last sentence and adding in its place the word “will”;

h. Paragraph (g)(2) is amended by removing the word “shall” and adding in its place the word “must”, and by removing the word “Customs” and adding in its place the term “CBP”;

i. Paragraph (g)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”, and removing the word “shall” and adding in its place the word “will”;

j. Paragraph (h)(1) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”, and removing the word “shall” each place that it appears and adding in its place the word “must”;

k. Paragraph (h)(2) is amended by removing the word “shall” and adding in its place the word “will”, and by removing the word “Customs” and adding in its place the term “CBP”;

l. Paragraph (h)(3) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”, and removing the word “shall” and adding in its place the word “must”;

m. Introductory paragraph (h)(4) is amended by removing the word “shall” and adding in its place the word “must”;

n. Paragraph (h)(5) is amended by removing the word “Customs” and adding in its place the term “CBP”, and removing the word “shall” and adding in its place the word “will”;

o. Paragraph (h)(5)(i) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”, and by removing the word “shall” each place that it appears and adding in its place the word “must”; and

p. Paragraph (j)(2) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”, and by removing the word “shall” each place that it appears and adding in its place the word “must”.

PART 24—CUSTOMS AND FINANCIAL ACCOUNTING PROCEDURE

3. The general authority citations for part 24 is revised and the specific authority citation for § 24.23 continues to read as follows:

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

* * * * *

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

* * * * *

§ 24.23 [Amended]

4. In § 24.23:

a. The introductory paragraph (a)(4) is amended by removing the word “shall” and adding in its place the word “must”;

b. Paragraph (b)(1)(i)(A) is amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”;

c. Paragraph (b)(1)(i)(B) is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;

d. Paragraph (b)(1)(ii) is amended by removing the word “shall” each place that it appears and adding in its place the word “will”;

e. Paragraph (b)(3) is amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”;

f. Paragraph (b)(4) is amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”;

g. Paragraph (c)(1) is amended by removing the word “shall” and adding in its place the word “will”;

- h. Paragraph (c)(2)(i) and (ii) are amended by removing the word “shall” and adding in its place the word “will”;
- i. Paragraph (c)(3) is amended by removing the word “shall” each place that it appears and adding in its place the word “will”;
- j. Paragraph (c)(4) is amended by removing the word “shall” and adding in its place the word “will”;
- k. Paragraph (c)(5) is amended by:
 - i. Removing the word “shall” and adding in its place the word “will”;
 - ii. Removing the word “Custons” and adding in its place the word “Customs”;
- l. Paragraph (d)(1) is amended by:
 - i. Removing the word “Customs” and adding in its place the term “CBP”; and
 - ii. Removing the word “shall” and adding in its place the word “must”;
- m. Paragraph (d)(2) is amended by:
 - i. Removing the word “shall” in the first sentence and adding in its place the word “must”;
 - ii. Removing the word “Customs” and adding in its place the term “CBP”; and
 - iii. Removing the word “shall” in the last sentence and adding in its place the word “will”;
- n. Paragraph (e)(1) is amended by removing the word “Customs”, in its heading and in its text, each place that it appears and adding in its place the word “customs”, and by removing the word “shall” each place that it appears and adding in its place the word “will”; and
- o. Paragraph (e)(2) is amended by removing the word “shall” and adding in its place the word “will”, and by removing the word “Customs” and adding in its place the word “customs”.

PART 102—RULES OF ORIGIN

5. 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.

* * * * *

§ 102.24 [Amended]

6. Section 102.24 is amended by removing paragraph (a), the paragraph designation “(b)”, and the paragraph (b) subject heading.

* * * * *

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

7. The general authority citation for part 123 and the specific authority citations for § 123.4 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

* * * * *

§ 123.4 [Amended]

8. In § 123.4:

a. The introductory paragraph is amended by removing the word “shall” and adding in its place the word “must”, and by removing the word “Customs” and adding in its place the term “CBP”;

b. Paragraph (a) is amended by removing the word “Customs” and adding in its place the term “CBP”;

c. Paragraph (b) is amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”, and removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

d. Paragraph (c) is amended by removing the word “Customs” and adding in its place the term “CBP”; and

e. Paragraph (d) is amended by removing the word “Customs” and adding in its place the term “CBP”, and removing the word “shall” and adding in its place the word “must”.

§ 123.92 [Amended]

9. In § 123.92:

a. Paragraph (b)(2)(i) is amended by removing the words “Customs Form (CF)” and adding in its place the term “CBP Form”;

b. Paragraph (b)(2)(ii) is amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”, and by removing the term “CF” and adding in its place the words “CBP Form”;

c. Paragraph (b)(2)(iii) is amended by removing the term “CF” and adding in its place the words “CBP Form”; and

d. Paragraph (c)(2) is amended by removing the term “Customs” and adding in its place the word “customs”.

PART 128—EXPRESS CONSIGNMENTS

10. The general authority citation for part 128 continues to read as follows:

Authority: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

* * * * *

§ 128.24 [Amended]

11. In § 128.24:

a. Paragraph (a) is amended by removing the sum “\$2,000” each place that it appears and adding in its place the sum “\$2,500”;

b. Paragraph (b) is amended by removing the word “Customs” and adding in its place the term “CBP”, and by removing the word “shall” and adding in its place the word “must”;

c. Paragraph (c) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”, and by removing the word “shall” each place that it appears and adding in its place the word “must”;

d. Paragraph (d) is amended by removing the word “Customs” and adding in its place the term “CBP”; and

e. Paragraph (e) is amended by removing, in the text, the word “shall” and adding in its place the word “will”.

PART 141—ENTRY OF MERCHANDISE

12. The general authority citation for part 141 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1498, 1624.

* * * * *

§ 141.82 [Amended]

13. In § 141.82:

a. Paragraphs (b) and (c) are amended by removing the word “shall” each place that it appears and adding in its place the word “must”; and

b. Paragraph (d) is amended by:

i. Removing the sum “\$2,000” and adding in its place the sum “\$2,500”;

ii. Removing the words “Sections VII, VIII, XI, and XII; Chapter 94; and”;

iii. Adding the symbol ”)” after the word “States”.

PART 143—SPECIAL ENTRY PROCEDURES

14. The general authority citation for part 143 is revised to read as follows:

Authority: 19 U.S.C. 66, 1321, 1414, 1481, 1484, 1498, 1624, 1641.

* * * * *

§ 143.21 [Amended]

15. In § 143.21:

- a. Paragraphs (a) and (b) are amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”;
- b. Paragraph (a) is further amended by removing the words “Sections VII, VIII, XI, and XII; Chapter 94 and”;
- c. Paragraph (c) is amended by:
 - i. Removing the sum “\$2,000” and adding in its place the sum “\$2,500”;
 - ii. Removing the citation “§ 141.51” and adding in its place the citation “§ 141.52”; and
 - iii. Removing the words “subheadings from Sections VII, VIII, XI, and XII; or in Chapter 94 and”;
- d. Paragraphs (f) and (g) are amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”;
- e. Paragraph (j) is amended by removing the word “Customs” and adding in its place the term “CBP”;

§ 143.22 [Amended]

16. Section 143.22 is amended by removing the word “Customs” and adding in its place the word “customs”, and by removing the sum “\$2,000” and adding in its place the sum “\$2,500”.

§ 143.23 [Amended]

17. In § 143.23:

- a. The introductory paragraph is amended by removing the word “shall” and adding in its place the word “must”, and by removing the word “Customs” each time it appears and adding in its place the term “CBP”;
- b. Paragraphs (b) and (c) are amended by removing the word “Customs” and adding in its place the term “CBP”;
- c. Paragraph (d) is amended by:
 - i. Removing the sum “\$2,000” and adding in its place the sum “\$2,500”;
 - ii. Removing the word “Customs” and adding in its place the term “CBP”; and
 - iii. Removing the words “Sections VII, VIII, XI, and XII; Chapter 94; and”;
- d. Paragraph (e) is amended by removing the word “can” and adding in its place the word “may”;
- e. Paragraphs (f), (g), and (h) are amended by removing the word “Customs” each time it appears and adding in its place the term “CBP”; and

f. Paragraph (i) is amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”.

§ 143.26 [Amended]

18. In § 143.26:

a. Paragraph (a) is amended by removing, in its heading and in its text, the sum “\$2,000” each place that it appears and adding in its place the sum “\$2,500”; and

b. Paragraph (b) is amended by removing the space between “appropriatel” and “y” to read “appropriately”, and by removing the word “Customs” and adding in its place the word “customs”.

PART 145—MAIL IMPORTATIONS

19. The general authority citation for part 145 and the specific authority citations for §§ 145.4, 145.12, 145.31, 145.35, 145.41 continue to read as follows:

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

* * * * *

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

* * * * *

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

* * * * *

Section 145.31 also issued under 19 U.S.C. 1321;

Section 145.35 through 145.38, 145.41, also issued under 19 U.S.C. 1498;

* * * * *

§ 145.4 [Amended]

20. In § 145.4:

a. Paragraph (a) is amended by removing the word “Customs” the first time it appears and adding in its place the term “CBP”, and by removing the word “Customs” the second time it appears and adding in its place the word “customs”; and

b. Paragraph (c) is amended by:

i. Removing the sum “\$2,000” and adding in its place the sum “\$2,500”;

ii. Removing the word “Customs” and adding in its place the term “CBP”; and

iii. Removing the word “shall” and adding in its place the word “must”.

§ 145.12 [Amended]

21. In § 145.12:

a. Paragraph (a)(2) is amended by removing the word “shall” and adding in its place the word “will”, and by removing the sum “\$2,000” and adding in its place the sum “\$2,500”;

b. Paragraph (a)(3) is amended by:

i. Removing the sum “\$2,000” each place that it appears and adding in its place the sum “\$2,500”;

ii. Removing the word “Customs” the first time that it appears and adding in its place the term “CBP”;

iii. Removing the word “Customs” the second time that it appears and adding in its place the word “customs”;

iv. Removing the words “shall not” and adding in its place the word “cannot”;

c. Paragraph (a)(4) is amended by:

i. Removing the word “shall” in the first and second sentence and adding in its place the word “will”;

ii. Removing the word “shall” in the last sentence and adding in its place the word “must”; and

iii. Removing the word “Customs” and adding in its place the term “CBP”, and adding the word, “customs” before the word, “station”;

d. Paragraph (b)(1) is amended by:

i. Removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

ii. Removing the word “shall” each place that it appears and adding in its place the word “will”;

iii. Removing the sum “\$2,000” and adding in its place the sum “\$2,500”; and

iv. Removing the word “shall” and adding in its place the word “will”;

e. Paragraph (b)(2) is amended by removing the word “shall” and adding in its place the word “will”, and by removing the word “Customs” and adding in its place the term “CBP”;

f. Paragraph (c) is amended by:

i. Removing, in its heading and in its text, the sum “\$2,000” and adding in its place the sum \$2,500”;

ii. Removing the word “Customs” each place that it appears in the first sentence and adding in its place the term “CBP”;

iii. Removing the words “Customs treatment” in the third sentence and adding in its place the words “customs treatment”;

iv. Removing the words “Customs office” and adding in its place the words “CBP office”; and

v. Removing the word “shall” each place that it appears and adding in its place the term “will”;

g. Paragraph (e)(1) is amended by removing the word “Customs” in each place that it appears and adding in its place the term “CBP”, and by removing the word “shall” and adding in its place the word “will”; and

h. Paragraph (e)(2) is amended by:

i. Removing the words “Customs Form” each place that it appears, in its heading and its text, and adding in its place the words “CBP Form”;

ii. Removing the words “Customs officer” and adding in its place the words “CBP officer”;

iii. Removing the words “Customs purposes” and adding in its place the words “customs purposes”;

iv. Removing the word “shall” in the first sentence and adding in its place the word “must”; and

v. Removing the word “shall” in the second sentence and adding in its place the word “will”.

§ 145.31 [Amended]

22. Section 145.31 is amended by removing the word “shall” and adding in its place the word “will”.

§ 145.35 [Amended]

23. Section 145.35 is amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”.

§ 145.41 [Amended]

24. Section 145.41 is amended by removing the sum “\$2,000” and adding in its place the sum “\$2,500”.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

25. The general authority citation for part 148 is revised and the specific authority citations for § 148.51 and 148.64 continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States).

* * * * *

Sections 148.43, 148.51, 148.63, 148.64, 148.74 also issued under 19 U.S.C. 1321;

* * * * *

§ 148.23 [Amended]

26. In § 148.23:

a. Paragraph (c)(1) is amended by removing, in its heading and in its text, the sum “\$2,000” and adding in its place the sum “\$2,500”;

b. Paragraph (c)(1) is further amended by removing, in the text, the words “Sections VII, VIII, XI, and XII; Chapter 94; and”;

c. Paragraph (c)(2) is amended by removing, in its heading and in its text, the sum “\$2,000” and adding in its place the sum “\$2,500”; and

d. Paragraph (c)(2) is further amended by removing the words “Sections VII, VIII, XI, and XII; Chapter 94; and”.

§ 148.54 [Amended]

27. Section 148.54(b) is amended by removing the sum “\$250” and replacing it with the sum “\$2,500”.

Dated: October 24, 2011.

ALAN D. BERSIN,
Commissioner

U.S. Customs and Border Protection.

TIMOTHY E. SKUD,
Deputy Assistant

Secretary of the Treasury.

[Published in the Federal Register, October 28, 2011 (76 FR 66875)]

19 CFR Part 4

[CBP Dec. 11–21]

**ADDITION OF THE COOK ISLANDS TO THE LIST OF
NATIONS ENTITLED TO SPECIAL TONNAGE TAX
EXEMPTION**

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

ACTION: Final rule.

SUMMARY: The Department of State has informed U.S. Customs and Border Protection (CBP) that discriminating or countervailing duties are not imposed by the government of the Cook Islands on vessels owned by citizens of the United States. Accordingly, vessels of the Cook Islands are exempt from special tonnage taxes and light money in ports of the United States. This document amends the CBP regulations by adding the Cook Islands to the list of nations whose

vessels are exempt from payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

DATES: This amendment is effective November 3, 2011. The exemption from special tonnage taxes and light money for vessels registered in the Cook Islands became applicable on August 22, 2011.

FOR FURTHER INFORMATION CONTACT: George F. McCray, Chief, Cargo Security, Carriers and Immigration Branch, Regulations and Rulings, Office of International Trade, (202) 325-0082.

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, called “light money,” on all foreign vessels which enter U.S. ports (46 U.S.C. 60302–60303). However, vessels of a foreign country may be exempted from the payment of special tonnage taxes and light money upon presentation of satisfactory proof that the government of that foreign country does not impose discriminatory or countervailing duties to the disadvantage of the United States (46 U.S.C. 60304).

Section 4.22, U.S. Customs and Border Protection (CBP) regulations (19 CFR 4.22), lists those countries whose vessels have been found to be exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The authority to amend this section of the CBP regulations has been delegated to the Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.

By letter dated August 22, 2011, the Department of State informed CBP that the government of the Cook Islands does not impose discriminating or countervailing duties on vessels owned by citizens of the United States. Accordingly, the Department of State recommended that the Cook Islands be added to the list of countries whose vessels are exempt from special tonnage taxes and light money in ports of the United States, effective August 22, 2011.

Finding

On the basis of the above-mentioned information from the Department of State regarding the absence of discriminating or countervailing duties imposed by the government of the Cook Islands on vessels

owned by citizens of the United States, CBP considers vessels of the Cook Islands to be exempt from the payment of special tonnage tax and light money, effective August 22, 2011. The CBP regulations are amended accordingly.

Inapplicability of Notice and Delayed Effective Date

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, CBP has determined that notice and public procedure are unnecessary pursuant to section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)). Further, for the same reasons, good cause exists for dispensing with a delayed effective date under section 553(d)(3) of the APA (5 U.S.C. 553(d)(3)).

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

List of Subjects in 19 CFR Part 4

Cargo vessels, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the CBP Regulations

For the reasons set forth above, part 4 of Title 19 of the Code of Federal Regulations (19 CFR part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 and the specific authority for § 4.22 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.22 also issued under 46 U.S.C. 60301, 60302, 60303, 60304, 60305, 60306, 60312, 60503;

* * * * *

§ 4.22 [Amended]

- 2. Section 4.22 is amended by adding the “Cook Islands” in appropriate alphabetical order.

Dated: October 28, 2011.

JOANNE ROMAN STUMP,
Chief,
Trade and Commercial Regulations Branch,
Regulations and Rulings, Office of
International Trade.

[Published in the Federal Register, November 3, 2011 (76 FR 68066)]

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

[USCBP-2011-0043; CBP Dec. 11-22]

RIN 1515-AD79

UNITED STATES-PERU TRADE PROMOTION AGREEMENT

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

ACTION: Interim regulations; solicitation of comments.

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

DATES: Interim rule effective November 3, 2011; comments must be received by January 3, 2012.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2011-0043.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229-1179.

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Public Participation

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

Background

On April 12, 2006, the United States and Peru (the “Parties”) signed the United States-Peru Trade Promotion Agreement (“PTPA” or “Agreement”), and on June 24 and June 25, 2007, the Parties signed a protocol amending the Agreement. The stated objectives of the PTPA include: strengthening the special bonds of friendship and

cooperation between the Parties and promoting regional economic integration; promoting broad-based economic development in order to reduce poverty and generate opportunities for sustainable economic alternatives to drug-crop production; creating new employment opportunities and improving labor conditions and living standards in the Parties; establishing clear and mutually advantageous rules governing trade between the Parties; ensuring a predictable legal and commercial framework for business and investment; fostering creativity and innovation and promoting trade in the innovative sections of the Parties' economies; promoting transparency and preventing and combating corruption, including bribery, in international trade and investment; protecting, enhancing, and enforcing basic workers' rights, and strengthening cooperation on labor matters; implementing the Agreement in a manner consistent with environmental protection and conservation, promoting sustainable development, and strengthening cooperation on environmental matters; and contributing to hemispheric integration and providing an impetus toward establishing the Free Trade Area of the Americas.

The provisions of the PTPA were adopted by the United States with the enactment on December 14, 2007, of the United States-Peru Trade Promotion Agreement Implementation Act (the "Act"), Public Law 110-138, 121 Stat. 1455 (19 U.S.C. 3805 note). Section 209 of the Act requires that regulations be prescribed as necessary to implement the provisions of the PTPA.

On January 16, 2009, the President signed Proclamation 8341 to implement the provisions of the PTPA. The Proclamation, which was published in the **Federal Register** on January 22, 2009 (74 FR 4105), modified the Harmonized Tariff Schedule of the United States ("HTSUS") as set forth in Annexes I and II of Publication 4058 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 32, incorporating the relevant PTPA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the PTPA where the special program indicator "PE" appears in parenthesis in the "Special" rate of duty sub-column. The modifications to the HTSUS also included a new Subchapter XVII to Chapter 99 to provide for temporary tariff-rate quotas and applicable safeguards implemented by the PTPA. After the Proclamation was signed, CBP issued instructions to the field and the public implementing the Agreement by allowing the trade to receive the benefits under the PTPA effective on or after February 1, 2009.

U.S. Customs and Border Protection ("CBP") is responsible for administering the provisions of the PTPA and the Act that relate to the importation of goods into the United States from Peru. Those

customs-related PTPA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Initial Provisions and General Definitions), Chapter Two (National Treatment and Market Access for Goods), Chapter Three (Textiles and Apparel), Chapter Four (Rules of Origin and Origin Procedures), and Chapter Five (Customs Administration and Trade Facilities).

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

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

Chapter Four of the PTPA sets forth the rules for determining whether an imported good is an originating good of a Party and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment under the PTPA as specified in the Agreement and the HTSUS. The basic rules of origin in Section A of Chapter Four are set forth in General Note 32, HTSUS.

Under Article 4.1 of Chapter Four, originating goods may be grouped in three broad categories: (1) Goods that are wholly obtained or produced entirely in the territory of one or both of the Parties; (2) goods that are produced entirely in the territory of one or both of the Parties and that satisfy the product-specific rules of origin in PTPA Annex 4.1 (change in tariff classification requirement and/or regional value content requirement) or Annex 3–A (textile and apparel specific rules of origin) and all other applicable requirements of Chapter Four; and (3) goods that are produced entirely in the territory of one or both of the Parties exclusively from originating materials. Article 4.2 sets forth the methods for calculating the regional value content of a good. Articles 4.3 and 4.4 set forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the *de minimis* criterion. Article 4.5 provides that production that takes place in the territory of one or both of the Parties may be accumulated such that, provided other requirements are met, the resulting good is considered originating. Article 4.6 provides a *de minimis* criterion. The remaining Articles within Section A of Chapter Four consist of additional sub-rules, applicable to the originating good concept, involving fungible goods

and materials, accessories, spare parts, and tools, sets, packaging materials and containers for retail sale, packing materials and containers for shipment, indirect materials, transit and transshipment, and consultation and modifications. All Articles within Section A are reflected in the PTPA implementing regulations, except for Article 4.14 (Consultation and Modifications).

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

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

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

Discussion of Amendments

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in Peru for which, like goods originating in Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, or Oman, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of PTPA Article 2.5 (Temporary Admission of Goods)

are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart Q

General Provisions

Section 10.901 outlines the scope of Subpart Q, Part 10 of the CBP regulations. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart Q, Part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart Q, Part 10 are in addition to the basic entry requirements contained in Parts 141– 143 of the CBP regulations.

Section 10.902 sets forth definitions of common terms used in multiple contexts or places within Subpart Q, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 1.3 and Annex 1.3 of the PTPA, and § 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions that apply in a more limited Subpart Q, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.903 sets forth the procedure for claiming PTPA preferential tariff treatment at the time of entry and, as provided in PTPA Article 4.15.1, states that an importer may make a claim for PTPA preferential tariff treatment based on a certification by the importer, exporter, or producer or the importer's knowledge that the good is an originating good. Section 10.903 also provides, consistent with PTPA Article 4.19.4(d), that when an importer has reason to believe that a claim is based on inaccurate information, the importer must correct the claim and pay any duties that may be due.

Section 10.904, which is based on PTPA Articles 4.15 and 4.19.4, requires a U.S. importer, upon request, to submit a copy of the certification of the importer, exporter, or producer if the certification forms the basis for the claim. Section 10.904 specifies the information that must be included on the certification, sets forth the circumstances under which the certification may be prepared by the exporter or producer of the good, and provides that the certification may be used either for a single importation or for multiple importations of identical goods.

Section 10.905 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment. Section 10.906, which is based on PTPA Article 4.16, provides that the certification is not required for certain non-commercial or low-value importations.

Section 10.907 implements PTPA Article 4.17 concerning the maintenance of relevant records regarding the imported good.

Section 10.908, which reflects PTPA Article 4.19.2, authorizes the denial of PTPA tariff benefits if the importer fails to comply with any of the requirements under Subpart Q, Part 10, CBP regulations.

Export Requirements

Section 10.909, which implements PTPA Articles 4.20.1 and 4.17.1, sets forth certain obligations of a person who completes and issues a certification for a good exported from the United States to Peru. Paragraphs (a) and (b) of § 10.909, reflecting PTPA Article 4.20.1, require a person who completes such a certification to provide a copy of the certification to CBP upon request and to give prompt notification of any errors in the certification to every person to whom the certification was given. Paragraph (c) of § 10.909 reflects Article 4.17.1, concerning the recordkeeping requirements that apply to a person who completes and issues a certification for a good exported from the United States to Peru.

Post-Importation Duty Refund Claims

Sections 10.910 through 10.912 implement PTPA Article 4.19.5 and section 206 of the Act, which allow an importer who did not claim PTPA tariff benefits on a qualifying good at the time of importation to apply for a refund of any excess duties at any time within one year after the date of importation. Such a claim may be made even if liquidation of the entry would otherwise be considered final under other provisions of law.

Rules of Origin

Sections 10.913 through 10.925 provide the implementing regulations regarding the rules of origin provisions of General Note 32, HTSUS, Chapter Four and Article 3.3 of the PTPA, and section 203 of the Act.

Definitions

Section 10.913 sets forth terms that are defined for purposes of the rules of origin.

General Rules of Origin

Section 10.914 sets forth the basic rules of origin established in Article 4.1 of the PTPA, section 203(b) of the Act, and General Note 32(b), HTSUS. The provisions of § 10.914 apply both to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under General Note 32, HTSUS. Section 10.914(a) specifies those goods that are originating goods because they are wholly obtained or produced entirely in the territory of one or both of the Parties.

Section 10.914(b) provides that goods that have been produced entirely in the territory of one or both of the Parties from non-originating materials each of which undergoes an applicable change in tariff classification and satisfies any applicable regional value content or other requirement set forth in General Note 32, HTSUS, are originating goods. Essential to the rules in § 10.914(b) are the specific rules of General Note 32(n), HTSUS, which are incorporated by reference.

Section 10.914(c) provides that goods that have been produced entirely in the territory of one or both of the Parties exclusively from originating materials are originating goods.

Value Content

Section 10.915 reflects PTPA Article 4.2 concerning the basic rules that apply for purposes of determining whether an imported good satisfies a minimum regional value content (“RVC”) requirement. Section 10.916, reflecting PTPA Articles 4.3 and 4.4, sets forth the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the *de minimis* rules.

Accumulation

Section 10.917, which is derived from PTPA Article 4.5, sets forth the rule by which originating materials from the territory of a Party that are used in the production of a good in the territory of the other Party will be considered to originate in the territory of that other country. In addition, this section also establishes that a good that is produced by one or more producers in the territory of one or both of the Parties is an originating good if the good satisfies all of the applicable requirements of the rules of origin of the PTPA.

De Minimis

Section 10.918, as provided for in PTPA Article 4.6, sets forth *de minimis* rules for goods that may be considered to qualify as originating goods even though they fail to qualify as originating goods under the rules specified in § 10.594. There are a number of exceptions to the *de minimis* rule set forth in PTPA Annex 4.6 (Exceptions to Article 4.6) as well as a separate rule for textile and apparel goods.

Fungible Goods and Materials

Section 10.919, as provided for in PTPA Article 4.7, sets forth the rules by which “fungible” goods or materials may be claimed as originating.

Accessories, Spare Parts, or Tools

Section 10.920, as set forth in PTPA Article 4.8, specifies the conditions under which a good’s standard accessories, spare parts, or tools are: (1) Treated as originating goods; and (2) disregarded in determining whether all non-originating materials undergo an applicable change in tariff classification under General Note 32(n), HTSUS.

Goods Classifiable as Goods Put Up in Sets

Section 10.921, which is based on PTPA Articles 3.3.10 and 4.9, provides that, notwithstanding the specific rules of General Note 32(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not qualify as originating goods unless: (1) Each of the goods in the set is an originating good; or (2) the total value of the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set, or 10 percent of the adjusted value of the set in the case of textile or apparel goods.

Packaging Materials and Packing Materials

Sections 10.922 and 10.923, which are derived from PTPA Articles 4.10 and 4.11, respectively, provide that retail packaging materials and packing materials for shipment are to be disregarded with respect to their actual origin in determining whether non-originating materials undergo an applicable change in tariff classification under General Note 32(n), HTSUS. These sections also set forth the treatment of packaging and packing materials for purposes of the regional value content requirement of the note.

Indirect Materials

Section 10.924, as set forth in PTPA Article 4.12, provides that indirect materials, as defined in § 10.902(m), are considered to be originating materials without regard to where they are produced.

Transit and Transshipment

Section 10.925, which is derived from PTPA Article 4.13, sets forth the rule that an originating good loses its originating status and is treated as a non-originating good if, subsequent to production in the territory of one or both of the Parties that qualifies the good as originating, the good: (1) Undergoes production outside the territories of the Parties, other than certain specified minor operations; or (2) does not remain under the control of customs authorities in the territory of a non-Party.

Origin Verifications and Determinations

Section 10.926 implements PTPA Article 4.18 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to PTPA preferential tariff treatment. This section also governs the conduct of verifications directed to producers of materials that are used in the production of a good for which PTPA preferential duty treatment is claimed.

Section 10.927, which reflects PTPA Article 3.2, sets forth the verification and enforcement procedures specifically relating to trade in textile and apparel goods.

Section 10.928 provides the procedures that apply when preferential tariff treatment is denied on the basis of an origin verification conducted under this subpart.

Section 10.929 implements PTPA Article 4.18.5 and § 205(b) of the Act, concerning the denial of preferential tariff treatment in situations in which there is a pattern of conduct by an importer, exporter, or producer of false or unsupported PTPA preference claims.

Penalties

Section 10.930 concerns the general application of penalties to PTPA transactions and is based on PTPA Article 5.9.

Section 10.931 reflects PTPA Article 4.19.3 and § 205(a)(1) of the Act with regard to an exception to the application of penalties in the case of an importer who promptly and voluntarily makes a corrected claim and pays any duties owing.

Section 10.932 implements PTPA Article 4.20.2 and § 205(a)(2) of the Act, concerning an exception to the application of penalties in the case of a U.S. exporter or producer who promptly and voluntarily

provides notification of the making of an incorrect certification with respect to a good exported to Peru.

Section 10.933 sets forth the circumstances under which the making of a corrected claim or certification by an importer or the providing of notification of an incorrect certification by a U.S. exporter or producer will be considered to have been done “promptly and voluntarily”. Corrected claims or certifications that fail to meet these requirements are not excepted from penalties, although the U.S. importer, exporter, or producer making the corrected claim or certification may, depending on the circumstances, qualify for a reduced penalty as a prior disclosure under 19 U.S.C. 1592(c)(4). Section 10.932 also specifies the content of the statement that must accompany each corrected claim or certification.

Goods Returned After Repair or Alteration

Section 10.934 implements PTPA Article 2.6 regarding duty-free treatment for goods re-entered after repair or alteration in Peru.

Part 24

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

Part 162

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional PTPA records maintenance and examination provisions contained in Subpart Q, Part 10, CBP regulations.

Part 163

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

Part 178

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

Inapplicability of Notice and Delayed Effective Date Requirements

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

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 4, 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in these regulations are under the review of the Office of Management and Budget in accor-

dance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collections of information in these regulations are in §§ 10.903 and 10.904. This information is required in connection with claims for preferential tariff treatment under the PTPA and the Act and will be used by CBP to determine eligibility for tariff preference under the PTPA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 800 hours.

Estimated average annual burden per respondent: .2 hours.

Estimated number of respondents: 4,000.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229–1179.

Signing Authority

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

List of Subjects

19 CFR Part 10

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

19 CFR Part 24

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

19 CFR Part 162

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

19 CFR Part 163

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

19 CFR Part 178

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

Amendments to the Regulations

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

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

■ 1. The general authority citation for Part 10 continues to read, and the specific authority for new Subpart Q is added, to read as follows:

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

* * * * *

Sections 10.901 through 10.934 also issued under 19 U.S.C. 1202 (General Note 32, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 110– 138, 121 Stat. 1455 (19 U.S.C. 3805 note).

■ 2. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the

Dominican Republic, Costa Rica, Bahrain, Oman, or Peru and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Note 12, 25, 26, 27, 29, 30, 31, and 32, HTSUS, in the country of which the importer is a resident.

- 3. Add Subpart Q to read as follows:

Subpart Q—United States-Peru Trade Promotion Agreement

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- 10.901 Scope.
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- 10.930 General.
- 10.931 Corrected claim or certification by importers.
- 10.932 Corrected certification by U.S. exporters or producers.
- 10.933 Framework for correcting claims or certifications.

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- 10.934 Goods re-entered after repair or alteration in Peru.

Subpart Q—United States-Peru Trade Promotion Agreement

General Provisions

§ 10.901 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Peru Trade Promotion Agreement (the PTPA) signed on April 12, 2006, and under the United States-Peru Trade Promotion Agreement Implementation Act (the Act; Pub. L. 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note)). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional

provisions implementing certain aspects of the PTPA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.902 General definitions.

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

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

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

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

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

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

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

(3) Fee or other charge in connection with importation;

(e) *Customs Valuation Agreement*. “Customs Valuation Agreement” means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

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

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

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

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

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

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

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

(m) *Indirect material*. “Indirect material” means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good in the territory of one or both of the Parties, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

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

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

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

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

(7) Catalysts and solvents; and

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

(n) *Originating*. “Originating” means qualifying for preferential tariff treatment under the rules of origin set out in Chapter Four and Article 3.3 of the PTPA, and General Note 32, HTSUS;

(o) *Party*. “Party” means the United States or Peru;

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

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

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

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

(t) *Territory*. “Territory” means:

(1) With respect to Peru, the continental territory, the islands, the maritime areas and the air space above them, in which Peru exercises sovereignty and jurisdiction or sovereign rights in accordance with its domestic law and international law;

(2) With respect to the United States:

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

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

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

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

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

Import Requirements

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

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

(1) A certification, as specified in § 10.904 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

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

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

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of

the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.931 and 10.933 of this subpart).

§ 10.904 Certification.

(a) *General.* An importer who makes a claim under § 10.903(b) of this subpart based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of the port director, a copy of the certification. The certification:

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

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

(3) Must include the following information:

(i) The legal name, address, telephone, and email address (if any) of the importer of record of the good, the exporter of the good (if different from the producer), and the producer of the good;

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

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

(iv) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 32(n), HTSUS; and

(v) The applicable rule of origin set forth in General Note 32, HTSUS, under which the good qualifies as an originating good; and

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

I certify that:

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

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

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

This document consists of ____ pages, including all attachments.

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

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

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

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

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

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

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

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

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

§ 10.905 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.903(b) of this subpart:

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

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.904 of this subpart;

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

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

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (see §§ 10.931 and 10.933 of this subpart).

§ 10.906 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.904 of this subpart for:

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

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

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.904 of this subpart, the port director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.907 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.903(b) of this subpart must maintain, for a minimum of five years after the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the PTPA. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

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

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

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.904 of this subpart, when requested, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the PTPA, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.925(a) of this subpart were met.

Export Requirements

§ 10.909 Certification for goods exported to Peru.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Peru must provide a copy of the certification (or such other medium or format approved by the Peru customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to Peru and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.932 and 10.933 of this subpart).

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

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

(iii) The production of the good in the form in which the good was exported.

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

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

Post-Importation Duty Refund Claims

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

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.911 of this subpart. Subject to the provisions of § 10.908 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.912(c) of this subpart.

§ 10.911 Filing procedures.

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

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

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

(2) A copy of a certification prepared in accordance with § 10.904 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

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

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.912 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.911 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim filed under § 10.911 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under § 10.911 of this subpart until judicial review has been completed.

(c) *Allowance of claim.* (1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under § 10.911 of this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under § 10.911 of this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under § 10.911 of this subpart.

(d) *Denial of claim.* (1) *General.* The port director may deny a claim for a refund filed under § 10.911 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.908 and 10.911 of this subpart, or if, following an origin verification under § 10.926 of this subpart, the port director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.926 of this subpart.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of

the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

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

Rules of Origin

§ 10.913 Definitions.

For purposes of §§ 10.913 through 10.925:

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

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

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

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

(1) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, HTSUS;

(2) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

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

(4) Motor vehicles provided for in subheadings 8703.21 through 8703.90, HTSUS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Waste and scrap derived from:

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

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

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

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

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

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

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

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

(l) *Non-originating good or non-originating material*. “Non-originating good” or “non-originating material” means a good or material, as the case may be, that does not qualify as originating under General Note 32, HTSUS, or this subpart;

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

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

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

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

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

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

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

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

(1) Is entirely or partially comprised of recovered goods; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to a new good that is classified in one of the enumerated HTSUS chapters or headings;

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

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

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

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

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

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

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

(4) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers’

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

(5) Product liability insurance;

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

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

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

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

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

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

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

(w) *Total cost*. “Total cost” means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

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

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

§ 10.914 Originating goods.

Except as otherwise provided in this subpart and General Note 32(m), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the PTPA only if:

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

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

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 32(n), HTSUS, and the good satisfies all other applicable requirements of General Note 32, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 32(n), HTSUS, and satisfies all other applicable requirements of General Note 32, HTSUS; or

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

§ 10.915 Regional value content.

(a) *General*. Except for goods to which paragraph (d) of this section applies, where General Note 32(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method*. Under the build-down method, the regional value content must be calculated on the basis of the formula $RVC = ((AV - VNM)/AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method*. Under the build-up method, the regional value content must be calculated on the basis of the formula $RVC = (VOM/AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the

value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods.*

(1) *General.* Where General Note 32(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or any of headings 8701 through 8708, HTSUS, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

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

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

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

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

(3) *Motor vehicles.*

(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the

producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or both Parties.

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

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

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

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

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

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: The fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

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

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

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

§ 10.916 Value of materials.

(a) *Calculating the value of materials*. Except as provided in § 10.924, for purposes of calculating the regional value content of a good under General Note 32(n), HTSUS, and for purposes of applying

the *de minimis* (see § 10.918 of this subpart) provisions of General Note 32(n), HTSUS, the value of a material is:

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

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

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

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

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

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

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

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In

order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Peru at or about the same time the goods were sold to the producer in Peru. Thus, if the seller of material x also sold an identical material to another buyer in Peru without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials.*

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

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

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

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

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

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

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

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

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

(d) *Accounting method.* Any cost or value referenced in General Note 32, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.917 Accumulation.

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

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.914 of this subpart and all other applicable requirements of General Note 32, HTSUS.

§ 10.918 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 32(n), HTSUS, is an originating good if:

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

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 32(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 32, HTSUS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Except as provided in paragraphs (b)(1) through (b)(7) of this section and General Note 32(n), HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods.* (1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 32(n), HTSUS, will nevertheless be considered to be an originating good if:

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

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

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are

wholly formed in the territory of one or both of the Parties. For purposes of this paragraph, “wholly formed” means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of one or both of the Parties.

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

§ 10.919 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term “inventory management method” means:

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

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

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

§ 10.920 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good’s standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 32(n), HTSUS, provided that:

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

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

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.915 of this subpart.

§ 10.921 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 32(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

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

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

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

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

§ 10.922 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the PTPA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 32(n), HTSUS.

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

Example 1. Peruvian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.916(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is \$10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, $RVC = ((AV - VNM)/AV) \times 100$ (see § 10.915(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their \$10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the

originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, $RVC = (VOM/AV) \times 100$ (see § 10.915(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.923 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.913(m) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 32(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in § 10.913(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Peruvian producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Peru. The shipping container is originating. The value of the shipping container determined under section § 10.916(a)(2) of this subpart is \$3. Good C is subject to a regional value content requirement. The transaction value of good C is \$100, which includes the \$3 shipping container. The U.S. importer decides to use the build-up method, $RVC = (VOM/AV) \times 100$ (see § 10.915(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a \$3 deduction for the value of the shipping container. Therefore, the AV is \$97 (\$100 - \$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.924 Indirect materials.

An indirect material, as defined in § 10.902(m) of this subpart, will be considered to be an originating material without regard to where it is produced.

Example. Peruvian Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.914(b)(1) of this subpart and General Note 32(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.925 Transit and transshipment.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under § 10.914 of this subpart will not be considered an originating good if, subsequent to that production, the good:

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

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

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

Origin Verifications and Determinations

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

(a) *Verification.* A claim for preferential tariff treatment made under § 10.903(b) or § 10.911 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. A verification of a claim for prefer-

ential tariff treatment under PTPA for goods imported into the United States may be conducted by means of one or more of the following:

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

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

(3) Visits to the premises of the exporter or producer in the territory of Peru, to review the records of the type referred to in § 10.909(c)(1) of this subpart or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

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

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.927 Special rule for verifications in Peru of U.S. imports of textile and apparel goods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification.

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

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

§ 10.928 Issuance of negative origin determinations.

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

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

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

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 32, HTSUS, and in §§ 10.913 through 10.925 of this subpart, the legal basis for the determination.

§ 10.929 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported repre-

sentations that goods qualify under the PTPA rules of origin set forth in General Note 32, HTSUS, CBP may suspend preferential tariff treatment under the PTPA to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 32, HTSUS.

Penalties

§ 10.930 General.

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

§ 10.931 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.903(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

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

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.909(b) with respect to the making of an incorrect certification.

§ 10.933 Framework for correcting claims or certifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Goods Returned After Repair or Alteration

§ 10.934 Goods re-entered after repair or alteration in Peru.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Peru as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Peru, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, “repairs or alterations” means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

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

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

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

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

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

* * * * *

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

* * * * *

■ 5. Section 24.23 is amended by adding paragraph (c)(11) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(11) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 203 of the United States-Peru Trade Promotion Agreement Implementation Act (*see also* General Note 32, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after February 1, 2009.

* * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

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

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

* * * * *

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

§ 162.0 Scope.

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

PART 163—RECORDKEEPING

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

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

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

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

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

* * * * *

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

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

* * * * *

IV. * * *

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

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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

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

■ 12. Section 178.2 is amended by adding new listings for “§§ 10.903 and 10.904” to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
* * * * *	* * *	
§§ 10.903 and 10.904	Claim for preferential tariff treat- ment under the U.S.-Peru Trade Pro- motion Agreement.	1651-0117
* * * * *	* * *	

Dated: October 28, 2011.

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

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

[Published in the Federal Register, November 3, 2011 (76 FR 68067)]



GENERAL NOTICE
19 CFR PART 177

**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF OVER CURRENT DETECTORS**

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of Over Current Detectors.

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 CPB proposes to revoke a ruling concerning the classification of Over Current Detectors (OCDs) under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB proposes to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before December 16, 2011.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. 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: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325-0036.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade 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)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke a ruling pertaining to the classification of Over Current Detectors. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) H80199, dated May 21, 2001 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP pro-

poses 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 his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY H80199, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H122802. (*see* Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: October 19, 2011

RICHARD MOJICA

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY H80199
May 21, 2001
CLA-2-85:RR:NC:MM:109 H80199
CATEGORY: Classification
TARIFF NO.: 8542.30.0090

MR. TODD KAZMIRSKI
PRESIDENT ISOSENSE, INC.
P.O. BOX # 7316
CAVE CREEK, AZ 85327

RE: The tariff classification of Over Current Detectors

DEAR MR. KAZMIRSKI:

In your letter dated April 18, 2001, you requested a tariff classification ruling.

The merchandise is described in your letter as Over Current Detectors (OCD). These items are electronic micro assemblies- ISOsense 50A OCD. The OCD is packaged and ready for assembly. The OCD will be mounted to a printed circuit board. They are designed to be mounted on a printed circuit board similar to a resistor, capacitor or integrated circuit and are assembled into a particular product. Applications for this merchandise include MRI machines, treadmills, motor controllers, inverters and power supplies and various types of electrical conversion. The output of the OCD is DIGITAL while the current it senses is ANALOG. All components are DISCRETE.

The device detects a specific current level in an electrical conductor routed through the detector's aperture. When a current equal to or greater than the detector's trip level is detected in the conductor, the output of the detector goes from a high state to a low state. The assembly has three discrete parts: a Hall effect switch, a gapped magnetic core and a plastic case. An electrical current flowing in a conductor routed through the aperture of the detector creates a magnetic field in the core. The core acts to focus the flux in the gap where the Hall switch is positioned in the assembly. Since the magnetic field density in the gap is proportional to the electric current in the aperture, the Hall switch can be programmed to trip the current level by adjusting the length of the air gap. At the current trip level, the output of the Hall switch goes from high digital state to low. The signal is typically used to momentarily shut down power transistors to constrain electrical current levels in the circuit

There are two electrical elements in the assembly: the Hall Switch and the magnetic core. The micro assembly performs one electrical function that is to detect a specific current level. The assembly contains one integrated circuit, the Hall effect switch. On May 9, 2001, a telephone conversation with you confirmed that this OCD is a mixed signal (analog/digital). The OCD is intended to be used for protection against over current events in power conversion equipment. Samples of this merchandise were submitted to this office

The applicable subheading for the Over Current Detectors will be 8542.30.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for "Electronic integrated circuits and micro assemblies; parts thereof: Other monolithic integrated circuits: Other, including mixed signals (analog/digital): Other."

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 Linda M. Hackett at 212-637-7048.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H122802
 CLA-2 OT:RR:CTF:TCM H122802 TNA
 CATEGORY: Classification
 TARIFF NO.: 8543.70.40

MR. TODD KASIRSKI, PRESIDENT
 IsoSense, Inc.
 P.O. Box #7316
 Cave Creek, AZ 85327

RE: Revocation of NY H80199; Classification of Hall-Effect Over Current Detectors

DEAR MR. KASIRSKI:

This letter is in reference to New York Ruling Letter (“NY”) H80199, issued to IsoSense, Inc. (“IsoSense”) on May 21, 2001, concerning the tariff classification of IsoSense 50A Over Current Detectors (“OCDs”). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the OCDs under subheading 8542.30.00, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Electronic integrated circuits and microassemblies; parts thereof: Other monolithic integrated circuits.”¹ We have reviewed NY H80199 and found it to be in error. For the reasons set forth below, we hereby revoke NY H80199.

FACTS:

The IsoSense 50A OCDs are Hall-Effect type current sensors- devices that protect power electronic circuits by signaling when current in the circuit has exceed a designated trip point. The OCDs are designed to be mounted to a printed circuit board. Applications for this merchandise include MRI machines, treadmills, motor controllers, inverters, power supplies and various types of electrical conversion apparatus. The output of the OCD is digital while the current it senses is analog.

The basic principle of the Hall-effect is that when a current-carrying conductor is placed into a magnetic field, a voltage will be generated perpendicular to both the current and the field. Thus, when subjected to a magnetic field, Hall-effect type sensors respond to the physical quantity to be sensed (e.g., the current) with an electrical signal that is proportional to the magnetic field strength, which it then supplies to the product to which it is incorporated.

In NY H80199, CBP classified the OCDs under subheading 8542.30.00, HTSUS, as: “Electronic integrated circuits and microassemblies; parts thereof: Other monolithic integrated circuits.”

ISSUE:

Whether the subject OCDs are classified in heading 8542, HTSUS, as electronic integrated circuits, or in heading 8543, HTSUS, as “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof”?

¹ We note that subheading 8542.30.00, HTSUS, was a subheading of the 2001 HTSUS that became subheading 8548.90.01, HTSUS, after the 2007 changes to the tariff schedule.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- 8542 Electronic integrated circuits; parts thereof:
 Electronic integrated circuits:
- 8542.31.00 Processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits
- 8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
 * * *
- 8543.70 Other machines and apparatus:
 * * *
- 8543.70.40 Electric synchros and transducers; flight data recorders; defrosters and demisters with electric resistors for aircraft

Legal Note 8 to Chapter 85, HTSUS, provides, in pertinent part, that: For the purposes of headings 8541 and 8542:

- (a) “*Diodes, transistors and similar semiconductor devices*” are semiconductor devices the operation of which depends on variations in resistivity on the application of an electric field;
- (b) “*Electronic integrated circuits*” are:
 - (i) Monolithic integrated circuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor or compound semiconductor material (for example, doped silicon, gallium arsenide, silicon germanium, iridium phosphide) and are inseparably associated...

For the classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature, except in the case of heading 8523, which might cover them by reference to, in particular, their function.

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

The EN to heading 8542, HTSUS, provides, in pertinent part:

The articles of this heading are defined in Note 8 (b) to the Chapter.

Electronic integrated circuits are devices having a high passive and active element or component density, which are regarded as single units (see Explanatory Note to heading 85.34, first paragraph concerning elements or components to be regarded as “passive” or “active”). However, electronic circuits containing only passive elements are **excluded** from this heading...

Electronic integrated circuits include:

(I) Monolithic integrated circuits.

These are microcircuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor material (doped silicon, for example) and are therefore inseparably associated. Monolithic integrated circuits may be digital, linear (analogue) or digital-analogue.

Monolithic integrated circuits may be presented:

- (i) Mounted, i.e., with their terminals or leads, whether or not encased in ceramic, metal or plastics. The casings may be cylindrical, in the form of parallelepipeds, etc.
- (ii) Unmounted, i.e., as chips, usually rectangular, with sides generally measuring a few millimetres.
- (iii) In the form of undiced wafers (i.e., not yet cut into chips).

Monolithic integrated circuits include:

- (i) Metal oxide semiconductors (MOS technology).
- (ii) Circuits obtained by bipolar technology.
- (iii) Circuits obtained by a combination of bipolar and MOS technologies (BIMOS technology)...

Except for the combinations (to all intents and purposes indivisible) referred to in Parts (II) and (III) above concerning hybrid integrated circuits and multichip integrated circuits, the heading also **excludes** assemblies formed by:

- (a) Mounting one or more discrete components on a support formed, for example, by a printed circuit;
- (b) Adding one or more other devices, such as diodes, transformers, or resistors to an electronic microcircuit; or
- (c) Combinations of discrete components or combinations of electronic microcircuits other than multichip-type integrated circuits.

The EN to heading 8543, HTSUS, provides, in pertinent part:

This heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90**.

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

The EN to heading 8479, HTSUS, provides, in pertinent part:

The following are to be regarded as having “individual functions”:

(B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, **provided** that this function:

(i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and

(ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

In NY H80199, CBP classified the subject OCDs in heading 8542, HTSUS, as monolithic integrated circuits. Legal Note 8 to Chapter 85, HTSUS, defines electronic integrated circuits and their components. Note 8(b)(i) to Chapter 85, HTSUS, provides that “monolithic integrated circuits” are electronic ICs in which the circuit elements are created in the mass and on the surface of a semiconductor or compound semiconductor material and are inseparably associated from that material *See* Note 8(b)(i). Note 8 further defines “diodes, transistors and similar semiconductor devices” as “...semiconductor devices whose operation depends on variations in resistivity on the application of an electric field.” *See* Note 8(a) to Chapter 85.

The subject merchandise contains three distinct parts: a Hall effect sensor, a gapped magnetic core, and a plastic case. While we acknowledge that the subject merchandise contains a monolithic integrated circuit (i.e., the Hall-effect sensor), the entire package is not classified as one, because it contains a magnetic core - a component that is not an inseparably associated circuit element, as required by Note 8(b)(1) to Chapter 85, HTSUS. As a result, the OCDs cannot be classified as a monolithic integrated circuit in heading 8542, HTSUS.

Heading 8543, HTSUS, provides for electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. There is no dispute that the subject OCDs are electrical machines and apparatus, and our discussion above has eliminated them from classification elsewhere in Chapter 85, HTSUS. Furthermore, they have individual functions in that they are designed to be mounted on an integrated circuit board but perform a separate function from that circuit board- i.e., the detection of

the magnetic field and response with an electric current. At the same time, the Hall-effect switch can be removed from the circuit board and does not play an integral role in the way the circuit board functions. Thus, it can be regarded as having an individual function. *See* EN 84.79.

Subheading 8543.70.40, HTSUS, provides in part for electric synchros and transducers. The term transducer is not defined in the text of the HTSUS or in the ENs. When not so defined, terms are construed in accordance with their common and commercial meaning, which are presumed to be the same. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. In HQ 964599, dated December 22, 2000, in considering the classification of optical encoders, we examined the term transducer and determined that it encompasses devices which convert variations in one energy form into corresponding variations in another, usually electrical form. *See also* HQ 967134, dated July 20, 2004; HQ 967103, dated July 20, 2004. The subject OCD measures changes in the magnetic field and changes them to electric signals so as to protect against over currents in power conversion equipment. As such, it meets the terms of heading 8543, HTSUS, and subheading 8543.70.40, HTSUS, in particular.

Furthermore, CBP has consistently classified similar Hall-effect gear-tooth sensors as transducers under heading 8543, HTSUS. For example, in HQ 967134, CBP classified a sensor composed of a monolithic IC, an aluminum-nickel-cobalt (AlNiCo) magnet, and three electrical conductor wires, all encased in a black plastic housing, in subheading 8543.89.40, HTSUS, as a transducer. *See also* HQ 967103, dated July 20, 2004. As a result, the subject merchandise is classified as a transducer in heading 8543, HTSUS.²

HOLDING:

Under the authority of GRI 1, the IsoSense 50A Over Current Detectors are classified in subheading 8543.70.40, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Electric synchros and transducers; flight data recorders; defrosters and demisters with electric resistors for aircraft.” The 2011 column one general rate of duty is 2.6% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

² We note that subheading 8543.89.40, HTSUS, which was a subheading of the 2004 tariff when HQ 967134 and 967103 were decided, is now subheading 8543.70.40, HTSUS, in the 2010 HTSUS.

EFFECT ON OTHER RULINGS:

NY H80199, dated May 21, 2001, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF THERMAL OXIDIZERS**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed modification of a ruling letter relating to the tariff classification of thermal oxidizers.

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) proposes to revoke a ruling letter and modify a ruling letter relating to the tariff classification of thermal oxidizers under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before December 16, 2011.

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, 799 9th Street, N.W. (Mint Annex), Fifth Floor, Washington, D.C. 20229-1179. Submitted comments may be inspected at the above address 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: Beth Green, Tariff Classification and Marking Branch: (202) 325-0347.

SUPPLEMENTARY INFORMATION:**Background**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter and modify a ruling letter pertaining to the tariff classification of thermal oxidizers. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) K88616, dated October 18, 2004 (Attachment A), and the modification of NY J84466, dated May 23, 2003 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care

on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY K88616 and NY J84466, CBP determined that the subject thermal oxidizers were classified in subheading 8417.80.00, HTSUS, which provides, in pertinent part, for: “Industrial or laboratory furnaces and ovens, including incinerators ...: Other ...” It is now CBP’s position that the subject thermal oxidizers are properly classified under subheading 8421.39.80, HTSUS, which provides, in pertinent part, for “[F]iltering or purifying machinery and apparatus, for liquids or gases, parts thereof: Filtering or purifying machinery and apparatus for gases: Other: Other ...”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY K88616 and to modify NY J84466, and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of thermal oxidizers according to the analysis contained in proposed HQ H118895, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends 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: November 1, 2011

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY K88616
October 18, 2004
CLA-2-84:RR:NC:1:104 K88616
CATEGORY: Classification
TARIFF NO.: 8417.80.0000

MR. KEITH LANDRY
KUEHNE & NAGEL
235 SOUTHFIELD PARKWAY
FOREST PARK, GA 30297

RE: The tariff classification of a clean enclosed burner from the Netherlands

DEAR MR. LANDRY:

In your letter dated September 29, 2004 on behalf of Bekaert Combustion Technology of Kennesaw, Georgia you requested a tariff classification ruling.

The Clean Enclosed Burner (hereinafter CEB) will be used chiefly for burning waste gases and hydrocarbon fumes. This is a smokeless system and has almost no heat radiation and no outwardly visible flame. It is said to be a new alternative to conventional flare systems currently in use at refineries and industrial processing facilities. The system exceeds a combustion efficiency of 99.99%. It is a modular system so that additional units can be added side by side at any time. The units are generally delivered to the desired location on a flatbed truck.

The product literature states that CEB employs a premixed surface combustion system. Surface combustion is a burning technique in which pre-mixed gas and air burns on a permeable medium. The mixture will be ignited above the burner surface. Combustion will take place in the combustion chamber by providing short blue flames. The burner is made from woven metal fibers. The fiber mat consists of several layers of metal fibers made of a special alloy capable of withstanding temperatures up to 1300 degrees C. Heat is released in convection form. The flame is shielded and directed upward by insulated walls.

A typical CEB system consists of the following parts: steel structure, stainless steel diffuser, stainless steel pre-mix chamber, burner deck equipped with permeable medium, gas piping, centrifugal fan, air supply control, flue gas temperature monitoring, pilot system with automatic electric ignition, valves, flame arrestor, emission measuring ports and a stack 6' high.

You ask that heading 8421 be considered. Heading 8421 provides for filtering or purifying machinery and apparatus for liquids and gases. You compare the CEB to a catalytic converter, classified in subheading 8421.39.40, because of its heated media ignition and cleansing process regarding waste gases. Based on the product literature however, the CEB is essentially a waste gas incinerator.

The applicable subheading for the Clean Enclosed Burner will be 8417.80.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for industrial or laboratory furnaces and ovens, including incinerators, non-electric, and parts thereof: other, except parts. The rate of duty will be 3.9 percent.

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 Robert Losche at 646-733-3011.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

NY J84466

May 23, 2003

CLA-2-84:RR:NC:1:104 J84466

CATEGORY: Classification

TARIFF NO.: 8421.39.8030; 8417.80.0000

MR. JOHN McLOUGHLIN
 ERNST & YOUNG LLP
 5 TIMES SQUARE
 NEW YORK, NY 10036

RE: The tariff classification of gas scrubbers from Singapore

DEAR MR. McLOUGHLIN:

In your letter dated May 5, 2003 on behalf of ATMI, Inc. of Danbury, Connecticut you requested a tariff classification ruling.

Literature has been provided for four gas scrubbing machines:

1. Vector - Wet Exhaust Gas Conditioner (Models: Ultra 3000, 3500, 5000, and 6000);
2. CDO - Controlled Decomposition Oxidation (Models: 859 and 863);
3. Novapure - Effluent Gas Scrubber (Model: EGS-237); and
4. Guardian - Gas Protective System (Models: GS-4 and GS-8)

The Vector is a wet scrubber designed to remove acidic and high particulate bearing gases commonly used in the wafer fabrication process. It features a two-stage water system. The primary stage uses a co-current, cylindrical packed-column design with high recirculating water flow while a counter-current second stage provides further treatment of the effluent gases.

The CDO oxidation and water treatment scrubbers use a combination of wet scrubbing and thermal oxidation to treat solid particulate and acid gas applications in a single unit. Initial scrubbing of soluble gases and particulate removal occurs in the primary cooling/scrubbing section and is accomplished via constant water spray. The secondary section removes additional water-soluble gases and fine particulate by employing a counter current water spray over a packed bed media. The thermal reaction section features a cylindrical liner contained within a resistance heating element.

The Novapure dry chemical scrubbers adsorb and concentrate hazardous effluent with consumable resins. This technology is typically used for ion implant applications. The unit offers a chemisorptive resin technology which irreversibly reacts with process gases and their by-products, forming non-volatile solids.

The Guardian active oxidation scrubbers are point-of-use emission abatement devices that thermally oxidize and decompose process gases. There are two main processes involved: first, waste gases are forced through a wall of flame as the gases are drawn into a combustion area; second, clean air is pumped through the machine's oxidizer which provides oxygen for combustion and dynamically positions the flame and cools the exhaust gas stream. You indicate that the Guardian cannot properly operate if both these functions do not exist. You also state that the Guardian possesses a control which determines the amount of clean airflow that is introduced into the process.

You propose that all four types of scrubbers should be classified under HTS subheading 8421.39.8030 which provides for filtering or purifying machinery and apparatus for gases: other: other. We agree except for the Guardian. You

suggest that the Guardian incorporates the characteristics of an air purifier and an incinerator. In addition to burning the hazardous gases, it mixes the toxic material with clean air. Since the functions are equally essential and the principal function cannot be determined, GRI 3(c) results in classification of the Guardian under heading 8421.

Your exhibit 4 describes the Guardian's principle of operation. As the gases pass through the flame into the swirl chamber, they are met with a perpendicular flow of air drawn through the top of the cabinet into the combustion chamber air intake. The perpendicular airflow provides shear to the ignited spent process gases, causing them to swirl and completely mix with air. The swirling action increases the time gases spend in the reaction chamber, prevents silane from forming a self-protecting bubble, ensures complete combustion, and cools the gases before they exit the combustion chamber. A deflector forces the reacted gases into the middle of the swirl chamber to ensure that the burning process gases are well mixed with the incoming air. The reaction thermodynamics are balanced with intake airflow to keep the exhaust temperature below the high temperature limit switch, which is factory set at 392 degrees F (200 degrees C).

The General Notes to Chapter 84 of the Harmonized Tariff System's Explanatory Notes discuss the General Arrangement of the Chapter in part (B). Item (B)(2) on page 1394 states that headings 8402 to 8424 cover the other machines and apparatus which are classified mainly by reference to their function, and regardless of the field of industry in which they are used. Based on the above description of the Guardian's principle of operation, the introduction of the perpendicular flow of air does not appear to be a separate air filtration process. It is an aid to the complete combustion of the gases. The Guardian essentially functions as an incinerator or furnace.

The applicable subheading for the Vector, CDO and Novapure gas scrubber models will be 8421.39.8030, Harmonized Tariff Schedule of the United States (HTS), which provides for filtering or purifying machinery and apparatus for gases: other: other. The rate of duty will be free.

The applicable subheading for the Guardian model scrubbers will be 8417.80.0000, HTS, which provides for industrial or laboratory furnaces and ovens, including incinerators, non-electric, and parts thereof: other, except parts. The rate of duty will be 3.9 percent.

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 Robert Losche at 646-733-3011.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT C]

HQ H118895
CLA-2 OT:RR:CTF:TCM H118895 EG
CATEGORY: Classification
TARIFF NO.: 8421.39.80

MR. KEITH LANDRY
KUEHNE & NAGEL
235 SOUTHFIELD PARKWAY
FOREST PARK, GA 30297

RE: Revocation of NY K88616 and Modification of NY J84466; Classification of a Thermal Oxidizer

DEAR MR. LANDRY:

This is in reference to New York Ruling Letter (NY) K88616, dated April 16, 2002, and NY J84466, dated May 23, 2003, concerning the tariff classification of thermal oxidizers under the Harmonized Tariff Schedule of the United States (HTSUS). In those rulings, U.S. Customs and Border Protection (CBP) classified the subject articles in heading 8417, HTSUS, which provides for industrial or laboratory furnaces and ovens. We have reviewed NY K88616 and find it to be in error. For the reasons set forth below, we hereby revoke NY K88616 and modify NY J84466.

FACTS:

In NY K88616, CBP described the product as follows:

The Clean Enclosed Burner (hereinafter CEB) will be used chiefly for burning waste gases and hydrocarbon fumes. This is a smokeless system and has almost no heat radiation and no outwardly visible flame. It is said to be a new alternative to conventional flare systems currently in use at refineries and industrial processing facilities. The system exceeds a combustion efficiency of 99.99%. It is a modular system so that additional units can be added side by side at any time. The units are generally delivered to the desired location on a flatbed truck.

The product literature states that CEB employs a premixed surface combustion system. Surface combustion is a burning technique in which premixed gas and air burns on a permeable medium. The mixture will be ignited above the burner surface. Combustion will take place in the combustion chamber by providing short blue flames. The burner is made from woven metal fibers. The fiber mat consists of several layers of metal fibers made of a special alloy capable of withstanding temperatures up to 1300 degrees C. Heat is released in convection form. The flame is shielded and directed upward by insulated walls.

A typical CEB system consists of the following parts: steel structure, stainless steel diffuser, stainless steel pre-mix chamber, burner deck equipped with permeable medium, gas piping, centrifugal fan, air supply control, flue gas temperature monitoring, pilot system with automatic electric ignition, valves, flame arrestor, emission measuring ports and a stack 6' high.

In NY J84466, CBP describes the product at issue as follows:

The Guardian active oxidation scrubbers are point-of-use emission abatement devices that thermally oxidize and decompose process gases. There are two main processes involved: first, waste gases are forced through a wall of flame as the gases are drawn into a combustion area; second, clean air is pumped through the machine's oxidizer which provides oxygen for combustion and dynamically positions the flame and cools the exhaust gas stream. You indicate that the Guardian cannot properly operate if both these functions do not exist. You also state that the Guardian possesses a control which determines the amount of clean airflow that is introduced into the process.

Both devices are thermal oxidizers. Thermal oxidizers are machines which treat waste gases to destroy pollutants known as VOCs (volatile organic compounds).¹ Thermal oxidation is a combustion process because the compounds are burned through exposure to high temperatures.² To being the thermal oxidation process, a stream of air laden with VOCs enters the thermal oxidizer's premix chamber. In the premix chamber, oxygen is added and mixed into the air stream. The VOC laden air stream mixed with oxygen is then pushed through a mesh of metal fibers.

This mesh of metal fibers is a permeable medium. After the air stream flows through the mesh, it is ignited by an electrical spark. The air stream burns just above the mesh. The mesh is designed to withstand temperatures of up to 1100 degrees Celsius. The resulting flame is shielded and directed upward by insulated walls.

As a result of the heat, a chemical reaction occurs whereby the VOCs react with the oxygen and are converted into water and carbon dioxide. The resulting output is 99.99% free from VOCs. On its website, Bekaert advertises the CEB for applications such as waste water treatment, landfill biogas, oil drilling and gas drilling.

ISSUE:

Are the thermal oxidizers classified under heading 8417, HTSUS, as furnaces or under heading 8421, HTSUS, as purifiers?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). 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 GRI's 2 through 6 may then be applied in order.

The HTSUS provisions at issue are as follows:

8417	Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof ...
------	---

¹ David A. Lewandowski, *Design of Thermal Oxidation Systems for Volatile Organic Compounds* 1 (CRC Press 2000).

² *Id.*

* * *

8421 Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof ...

* * *

Section XVI, Note 3, which covers Chapter 84, HTSUS, states the following:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN (VI) to Section XVI states, in pertinent part, that:

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3 (c); such is the case, for example, in respect of multi-function machines potentially classifiable in several of the headings 84.25 to 84.30, in several of the headings 84.58 to 84.63 or in several of the headings 84.69 to 84.72.

* * *

EN 84.17 states, in pertinent part, that:

This heading covers non-electrical industrial or laboratory furnaces and ovens, designed for the production of heat in chambers at high or fairly high temperatures by the combustion of fuel (either directly in the chamber or in separate combustion chambers) ...

The heading includes:

...

(13) Incinerators and similar apparatus specially designed for the burning of waste, etc. ...

* * *

EN 84.21(II) states in pertinent part, that:

(B) Filtering or purifying machinery, etc., for gases

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapors).

* * *

The terms “furnace” and “purifier” are not defined in the HTSUS. When, as in this case, the tariff terms are not defined in the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

In *Webster’s New World Dictionary*, the term “furnace” is defined as “1. an enclosed chamber or structure in which heat is produced, as by burning fuel, for warming a building, reducing ores and metals, etc. 2. any extremely hot place.”³ Further, EN 84.17 states that the heading covers machines “designed for the production of heat in chambers at high or fairly high temperatures.” EN 84.17(13) states that the heading covers “incinerators and similar apparatus specially designed for the burning of waste.” The merchandise uses a heated chamber to burn up waste gases. Thus, it could be classified as a furnace of heading 8417, HTSUS.

In *Noss Co. v. United States*, 588 F. Supp. 1408, 1412 (Ct. Int’l Trade 1984), the court provided several dictionary definitions of the term “purify.” One of the definitions was “to remove unwanted constituents from a substance.” *Id.* citing *The McGraw-Hill Dictionary of Scientific and Technical Terms* (2d ed. 1978). Although the court applied this definition to a tariff term in the Tariff Schedule of the United States (predecessor to the HTSUS), the Court of Appeals for the Federal Circuit (CAFC) has applied the same definition of the term “purify” under the HTSUS. *Franklin v. United States*, 289 F.3d 753, 758 (Fed. Cir. 2002) (*Franklin*) (applied this definition to coral sand packets which kill bacteria and neutralize chlorine in glasses of drinking water). In addition, EN 84.21(II)(B) states that the heading covers machines which “are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapors).”

Now we must apply these definitions of “purify” to the instant merchandise. The merchandise satisfies the *Franklin* definition of a purifier because it removes unwanted constituents (VOCs) from a substance (the air stream). The merchandise also satisfies the definition of a purifier in the ENs because it eliminates harmful materials (VOCs) through combustion. Therefore, the merchandise could also be classified as a purifier.

The instant machine, through the method of combustion, performs two functions: incineration of the VOCs, and purification of the gas input. Thus, the thermal oxidizers at issue are “designed for the purpose of performing two or more complementary or alternative functions” (Section XVI, Note 3), and are therefore multi-function machines. Hence, we must identify the principal

³ *Webster’s New World Dictionary* 547 (3d. College Ed. 1988).

function in order to determine how the merchandise is classified. Here, the functions are intertwined. The incinerator simultaneously heats and purifies. Heating the VOC laden air stream purifies the air stream and removes the VOCs. While the heating is the principal action, purification is the desired result. Companies order these thermal oxidizers for their ability to purify waste gas. Since the two functions are so tightly linked, we cannot identify one principal function for the machine.

The ENs to section XVI, paragraph VI pertaining to multi-function machines and composite machines, instruct that where it is not possible to determine the principal function, as provided in note 3, it is necessary to apply GRI 3(c). GRI 3(c) provides that “[w]hen goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

Heading 8421, HTSUS, appears later in numerical order. Hence, the merchandise shall be classified as a purifier under heading 8421, HTSUS. This result is consistent with that of NY R05112, classifying a thermal oxidizer in heading 8421, HTSUS.

HOLDING:

By application of GRI 1, Section note 3 to Section XVI and GRI 3(c), the merchandise is classified under heading 8421, HTSUS. Specifically, it is classified under subheading 8421.39.80, HTSUS, which provides, in pertinent part, for “[F]iltering or purifying machinery and apparatus, for liquids or gases, parts thereof: Filtering or purifying machinery and apparatus for gases: Other: Other ...” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY K88616, dated October 18, 2004, is hereby revoked.

NY J84466, dated May 23, 2003, is hereby modified with regard to the Guardian Gas Protective System (Models GS-4 and GS-8).

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**GENERAL NOTICE
19 CFR PART 177**

**PROPOSED MODIFICATION OF RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF EZ TREE BAR**

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

ACTION: Notice of proposed modification of a tariff classification ruling letter and revocation of treatment relating to the classification of the EZ Tree Bar.

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 a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the EZ Tree Bar from China. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATES: Comments must be received on or before December 16, 2011.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch, at (202)–325–0132.

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)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify a ruling letter relating to the tariff classification of certain EZ Tree Bars. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) N132377, dated December 7, 2010, (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.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved with 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 N132377, CBP classified the EZ Tree Bar in subheading 7326.00.50, HTSUS, which provides for other articles of iron or steel, other, other, other, other. Based on our analysis, we continue to believe that this primary classification is correct. In N132377, CBP also ruled that the EZ Tree Bar is eligible for entry under subheading 9817.00.50, HTSUS, which provides for the duty-free entry of machinery, equipment and implements to be used for agricultural or horticultural purposes. We now believe that this determination is not correct. U.S. Note 2(ij) in Chapter 98 Subchapter XVII states that the provisions of 9817.00.50, HTSUS do not apply to articles classified in

Chapter 73, HTSUS, with certain exceptions. Because subheading 7326.00.50, HTSUS, is not among the subheadings excepted from of the exclusion for articles of Chapter 73 HTSUS, set forth in U.S. note 2(ij), we now believe that the EZ Tree Bar is not eligible for duty-free entry under subheading 9817.00.50, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY N132377 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H188375 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that is contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

MYLES B. HARMON,
Director
Commercial Rulings Division

[ATTACHMENT A]

December 7, 2010
CLA-2-73:OT:RR:NC:N1:113
CATEGORY: Classification
TARIFF NO.: 7326.90.8588; 9817.00.5000

MR. OLE SKAANING
KEN HAMANAKA COMPANY INC.
5777 WEST CENTURY BLVD.
SUITE 760 LOS ANGELES, CA 90045

RE: The tariff classification of the EZ Tree Bar from China

DEAR MR. SKAANING:

In your letter dated November 11, 2010, you requested a tariff classification ruling on behalf of your client Olivine International Trading Ltd.

The item concerned is called the EZ Tree Bar. It is composed of two, nine inch galvanized steel tubes. Located on each end of each tube is a slit where an adjustable clamp is inserted through. You indicated that the larger tube contains holes drilled at one inch intervals and also contains a larger diameter than the other tube. The smaller tube is inserted into the larger tube and contains a push lock that will allow the tube to be locked into place into one of the holes of the larger tube, thus making the EZ Tree Bar adjustable.

The adjustable bar comes with a protective strip comprised of foam material. It measures approximately 12 inches in length by 1 inch in width and is ¼ inch thick. The protective strip is self-adhesive on one side and may be cut to size. It is to be secured to the clamp to protect the newly planted tree from damage. The clamp comes completely assembled except for the protective strip with which it is packaged together, ready for retail sale.

One side of the bar is to be fixed to a pole and the other side of the bar is to be fixed to the newly planted tree so that the tree is held in place.

The applicable subheading for the EZ Tree Bar will be 7326.90.8588, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of iron or steel, other, other, other, other, other. The rate of duty will be 2.9 percent ad valorem.

You also asked in your letter if this item would qualify for 9817.00.5000. Subheading 9817.00.5000, HTSUS, is the provision covering machinery, equipment, or implements to be used in agricultural or horticultural pursuits. The National Import Specialist that handles subheading 9817.00.5000, HTSUS, has indicated that this subheading is an actual use provision subject to the certification process found in Sections 10.131–10.139 of the Customs Regulations. The use of the EZ Tree Bar satisfies a horticultural pursuit. As a result, these items will also be classified in the alternative subheading of 9817.00.5000, HTSUS, subject to certification. The conditional rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding Subheading 9817.00.5000, HTSUS, please contact National Import Specialist Mark Palasek at (646) 733-3013. If you have any questions regarding Subheading 7326.90.8588, HTSUS, please contact National Import Specialist Ann Taub at (646) 733-3018.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H188375
CLA-2 OR:RR:CTF:TCM H188375 RSD
CATEGORY: Classification
TARIFF No. 7326.90.85

MR. OLE SKAANING
KEN HAMANAKA COMPANY, INC.
5777 WEST CENTURY BLVD.
SUITE 760
LOS ANGELES, CALIFORNIA 90045

RE: Modification of NY N132377, Eligibility for Duty-Free Entry of the EZ Tree Bar under 9817.00.50, HTSUS, Chapter 98, U.S. Note 2(ij)

DEAR MR. SKAANING:

This is in reference to New York Ruling Letter (NY) N132377 issued by the Customs and Border Protection (CBP) National Commodity Specialist Division on December 7, 2010, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the EZ Tree Bar from China. The ruling held that the EZ Tree Bar was classified in subheading 7326.90.85, HTSUS, and would also be eligible for duty-free entry under subheading 9817.00.50, HTSUS. We have reconsidered this decision and for the reasons set forth below, have determined that although the product would still be classified in subheading 7326.90.85, HTSUS, its eligibility for duty-free entry under subheading 9817.00.50, HTSUS is not correct.

FACTS:

The item concerned is referred to as a EZ Tree Bar, which is used to hold a tree in place while it grows. According to the facts set forth in NY N132377, the product is composed of two, nine inch galvanized steel tubes. Located on each end of each tube is a slit where an adjustable clamp is inserted. The larger tube contains holes drilled at one inch intervals and also contains a larger diameter than the other tube. The smaller tube is inserted into the larger tube and contains a push lock that will allow the tube to be locked into place into one of the holes of the larger tube, thus making the EZ Tree Bar adjustable.

The adjustable bar comes with a protective strip comprised of foam material. It measures approximately 12 inches in length by 1 inch in width and is ¼ inch thick. The protective strip is self-adhesive on one side and may be cut to size. The strip is secured to the clamp to protect the newly planted tree from damage. The clamp comes completely assembled except for the protective strip which is separately packaged in the retail box. One side of the bar is attached to a pole and the other side of the bar is attached to the newly planted tree so that the tree is held in place.

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods

in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and mutatis mutandis, to the GRIs 1 through 5.

The HTSUS subheadings under consideration are as follows:

7326 Other articles of iron or steel:

7326.90 Other:

Other:

Other:

7326.90.85 Other.

9817.00.50 Machinery, equipment and implements to be used for agricultural or horticultural purposes...

In NY N132377, CBP ruled that the applicable subheading for the EZ Tree Bar will be 7326.90.85, HTSUS, which provides for other articles of iron or steel, other, other, other, other. After review, we affirm that this primary classification of the EZ Tree Bar is correct.

However, NY N132377 also found that the EZ Tree Bar would qualify for duty-free entry under subheading 9817.00.50, HTSUS. Subheading 9817.00.50, HTSUS, provides for the duty-free entry of machinery, equipment and implements to be used for agricultural or horticultural purposes. This is a provision based on actual use. *See* Headquarters Ruling Letter (HQ) 953152, dated March 15, 1993. A tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within three years after the goods are entered. *See* Additional U.S. Rule of Interpretation 1(b), HTSUS. U.S. Note 2(ij) to Chapter 98 Subchapter XVII states in part, that the provisions of subheading 9817.00.50, HTSUS does not apply to articles classified in Chapter 73, HTSUS, with certain exceptions. Subheading 7326.90, HTSUS is not one of the exceptions.

We have held that before an article may be classified in subheading 9817.00.50, HTSUS, and qualify for the agricultural use duty exemption it must first satisfy each part of the following three-part test, taken in order:

- 1) the articles must not be among the long list of exclusions to subheading 9817.00.50 or 9817.00.60 under Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2;
- 2) the terms of subheadings 9817.00.50 or 9817.00.60 must be met in accordance with GRI 1; and
- 3) the merchandise must meet the actual use conditions required in accordance with sections 10.131 10.139 of the CBP Regulations (19 CFR 10.131 10.139).

If a good fails any part of the test, then recourse would have to be made to its primary classification. *See* HQ 086211, dated March 24, 1990.

Therefore, because the EZ Tree Bar is classified in subheading 7326.90 HTSUS, it is not eligible for duty-free entry under 9817.00.50, HTSUS. Thus, it will be classified according to its primary classification in subheading 7326.90.85, HTSUS.

HOLDING:

The EZ Tree Bar is classified in subheading 7326.90.85, HTSUS which provides for articles of iron or steel, other, other, other, other. In accordance with U.S. Note 2(ij), articles classifiable in this provision are not eligible for duty-free entry under heading 9817.00.60, HTSUS. Therefore, the EZ Tree Bar is not eligible for duty-free entry under subheading 9817.00.60.

EFFECT ON OTHER RULINGS:

NY N183835 dated December 7, 2010, is modified with respect to classification of the EZ Tree Bar in subheading 9817.00.50, HTSUS. The primary classification of the EZ Tree Bar in subheading 7326.90.85, HTSUS, is unchanged.

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 and Trade Facilitation Division

GENERAL NOTICE

REVOCATION OF TREATMENT RELATING TO THE APPRAISEMENT OF CUT FLOWERS ENTERED UNDER CONSIGNMENT

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

ACTION: Notice of revocation of treatment relating to the appraisal of cut flowers entered under consignment.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a treatment relating to the appraisal of cut flowers entered under consignment. One comment was received in response to the notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 17, 2012.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Classification Branch, (202) 325-0046.

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)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, a notice was published on August 3, 2011, in the *Customs Bulletin*, Vol. 45, No. 32, advising interested parties that CBP was proposing to revoke any treatment relating to the appraisement of cut flowers entered under consignment. For a considerable period of time, a port has allowed the appraised value of cut flowers for which claims for duty-free treatment under the Andean Trade Preference Act (ATPA) were made and which were entered under consignment to be calculated by certain importers using an average price supplied by a flower association. The average price is derived from prices from the previous four weeks (per flower and grade) of imported flowers sold in the United States, less a percentage for gross margin and international transportation. This average price is made available only to participating flower association members who use it for valuation of flowers they import under consignment. While it appears that the merchandise was eligible for duty-free treatment, CBP has determined that this method of appraisement does not comply with the requirements of the Value Statute, 19 U.S.C. § 1401a. One comment was received in response to the notice and is addressed in the final ruling letter attached to this

notice. In addition, minor changes have been made to the original proposed ruling to clarify certain points.

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 the final decision on this notice.

Pursuant to U.S.C. 1625(c)(2), CBP is revoking any treatment which allowed appraisement of consignment entries using an average price supplied by a flower association. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: November 1, 2011

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H165361

November 1, 2011

OT:RR:CTF:VS H165361 CMR

CATEGORY: Valuation

U.S. CUSTOMS AND BORDER PROTECTION
MIAMI INTERNATIONAL AIRPORT (SERVICE PORT)
6601 NW 25TH STREET
ROOM 272
MIAMI, FL 33122

RE: Treatment of Flowers Imported Under Consignment; Valuation

DEAR PORT DIRECTOR:

Your office requested the advice of this office concerning the use of a valuation method for certain flowers imported under consignment. You believe that the method is not in accordance with the valuation statute. You ask our views with respect to this issue and also ask about the proper way to proceed in light of the fact that this method has been in use at your port for a considerable period of time. This decision is our response. For the reasons set forth below, any treatment that has been previously allowed based on the use of this method is revoked.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on August 3, 2011, in the *Customs Bulletin*, Vol. 45, No. 32. One comment was received and is discussed below.

FACTS:

Until earlier this year, under the Andean Trade Preference Act (ATPA) fresh cut flowers from Colombia, Ecuador and Peru were eligible for duty-free treatment. The ATPA expired on February 12, 2011, and flowers from ATPA beneficiary countries thus became dutiable.¹ In connection with this change, representatives of a flower association discussed with port officials the method of valuation for flowers entered under consignment. Under this method, flowers are valued based on an average of the prices of flowers from the previous four weeks (per flower and grade) of imported flowers sold in the United States, less a percentage for gross margin and international transportation. You indicate this average price is utilized only by participating floral association members.

You are of the view that this average price calculation being used by certain importers is contrary to the valuation statute, and have sought advice from this office regarding the appropriate manner to discontinue the use of this method and to notify the industry of the change. You supplied this office with information regarding the background of this issue, including a memorandum from the floral association to its members regarding the valuation of

¹ Public Law No. 112–42, effective October 21, 2011, extends the Andean Trade Preference Act and the Andean Trade Promotion and Drug Eradication Act through July 31, 2013. The public law allows for refunds of duties paid for goods which would have qualified at the time of entry for duty-free treatment or other preferential treatment under these programs but for the lapse of the effective date.

flowers entered under consignment and the agreement reached with Customs; two email messages from 2006; a November 9, 1999, Information Bulletin indicating that the Port of Miami would no longer be issuing the Monthly Flower Price List; and a Monthly Flower Price List issued by the Port of Miami, dated September 29, 1999, indicating the prices listed were the transaction values of identical or similar merchandise.

ISSUE:

What is the proper method of valuing consignment entries of cut flowers?

LAW AND ANALYSIS:

Merchandise imported into the United States is appraised in accordance with Section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. § 1401a). The preferred method of appraisal is transaction value, which is defined as the “price actually paid or payable for the merchandise when sold for exportation to the United States” plus certain statutory additions. 19 U.S.C. § 1401a(b)(1). However, in order to use transaction value as the basis for appraisal, there must be a *bona fide* sale. If there is no sale, as in the case of merchandise imported under consignment, then appraisal must be based on another method set forth in 19 U.S.C. § 1401a, the valuation statute, taken in sequential order.

The remaining methods of appraisal set forth in 19 U.S.C. § 1401a must be considered, in order of precedence: the transaction value of identical or similar merchandise (19 U.S.C. § 1401a(c)), deductive value (19 U.S.C. § 1401a(d)), computed value (19 U.S.C. § 1401a(e)), and the “fallback” method (19 U.S.C. § 1401a(f)).

The transaction value of identical merchandise or similar merchandise is based on sales, at the same commercial level and in substantially the same quantity, of merchandise exported to the United States at or about the same time as the merchandise being appraised. *See* 19 U.S.C. § 1401a(c). While this decision concerns cut flowers sold on consignment, it is possible that there are sales of identical or similar merchandise at the same commercial level and in substantially the same quantity exported to the U.S. at or about the same time as the consignment entries of cut flowers. As noted in Headquarters Ruling Letter (HQ) W563483, dated December 28, 2006, in *Four Seasons Produce, Inc. v. United States*, 25 CIT 1395 (2001), Mexican asparagus, exported to the U.S. on consignment, was appraised by Customs based on the transaction value of identical or similar merchandise. The court noted that Customs had considered the issue of the perishable nature and price fluctuations in the produce market in interpreting the statutory language “at or about the time” to arrive at a transaction value of identical or similar merchandise. The court also noted that Customs considered that in the case of perishable products, such as asparagus, prices may fluctuate seasonally, weekly or even daily. Thus, frequent price fluctuations did not preclude the appraisal of the asparagus based on the transaction value of identical or similar merchandise. Consignment entries of cut flowers imported through the Port of Miami should be appraised based upon the transaction value of

identical or similar merchandise to the extent possible. *See* HQ 546999, dated April 12, 1999, for a discussion of appraisement using the transaction value of similar or identical merchandise.

If there are no entries of identical or similar flowers on which to base appraisement of a consignment entry of cut flowers, then the deductive value method is applied. Under the deductive value method, the merchandise is appraised on the basis of the price at which the merchandise concerned is sold in the U.S. in its condition as imported either at or about the time of importation, or before the close of the 90th day after the date of importation. The price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity. *See* 19 U.S.C. § 1401a(d)(2)(A)(i) and (ii). This sales price is subject to certain enumerated deductions. *See* 19 U.S.C. § 1401a(d)(3).

Fresh cut flowers are much like produce in that they are perishable in nature and subject to price fluctuations depending on the time of year and various holidays. HQ W563483 cited to various rulings where produce has been valued based on the deductive value method, including HQ 545032, dated December 4, 1993 and HQ 546602, dated January 29, 1997. *See* HQ H007667, dated May 25, 2007, wherein CBP found melons from Panama to be properly appraised using deductive value.

As the merchandise concerned in deductive value refers not only to the actual imported merchandise, but also to identical or similar merchandise, cut flowers imported under consignment may be appraised either by the transaction value of identical or similar merchandise or the deductive value method. We expect the importer will be aware of either importations of identical or similar merchandise for which transaction value served as the basis of appraisement or be able to provide a value to the port based upon the deductive value of the actual merchandise or the deductive value of identical or similar merchandise. It is our understanding from your port that some importers import both on consignment and direct sales in which case transaction value of identical or similar merchandise should be available to them. Therefore, we are confident the port will be able to appraise cut flowers imported under consignment using either transaction value or identical or similar merchandise or deductive value. Reconciliation is also an option importers may choose.

It is unlikely that computed value would be selected before deductive value by an importer as it requires information from the producer that the importer is not likely to have. However, if an importer has the necessary information and chooses computed value to be applied ahead of deductive value, that is the importer's option. We see no reason to reach 19 U.S.C. § 1401a(f), the fallback method, as a value upon which to base appraisement should be ascertainable by one of the previous methods.

However, it appears that the fallback method is the method of appraisement being used for consignment entries by certain cut flower importers through the Port of Miami. 19 U.S.C. § 1401a(f) provides, in relevant part:

- (1) If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this chapter, under subsections (b) through (e) of this section, the merchandise shall be appraised for the purposes of this chapter on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this chapter, on the basis of—

- (A) the selling price in the United States of merchandise produced in the United States;
- (B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;
- (C) the price of merchandise in the domestic market of the country of exportation;
- (D) a cost of production, other than a value determined under subsection (e) of this section for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;
- (E) the price of merchandise for export to a country other than the United States;
- (F) minimum values for appraisement; or
- (G) arbitrary or fictitious values.

* * *

Based on a reading of the statute, the fallback appraisement method being used by certain cut flower importers, *i.e.*, participating members of the floral association, does not meet the requirements of paragraph § 1401a(f)(1) cited above. First, the value for appraisement purposes of cut flowers imported under consignment should be ascertainable either through the use of the transaction value of identical merchandise or similar merchandise, or by the use of the deductive value method so there should be no reason to reach the fallback method. Secondly, the method being used is not a reasonable adjustment to an existing method to arrive at a value. The method uses averaging to arrive at a value when other methods set forth in the statute provide reasonable means by which an appraisement value may be determined. In addition, 19 U.S.C. § 1401a(f)(2)(B), read in conjunction with 19 U.S.C. § 1401a(c)(2), shows a clear desire on the part of the drafters of the statute that the lowest value be used when more than one alternative value exists for appraisement purposes. Averaging of values clearly conflicts with this principle of the statute.

One comment was received in response to the notice of proposed revocation of treatment. The commenter argues that “[u]nless and until MIA [Miami International Airport] CBP confirms, it can arrive at a viable value for consigned flowers based on identical or similar merchandise under transaction value pursuant to 19 U.S.C. § 1401a(c) or deductive value pursuant to 19 U.S.C. § 1401a(d), CBP should withdraw its revocation of the treatment afforded to consigned flowers for over the last eleven (11) years.”

The commenter misunderstands the role of the port and CBP in the appraisal of flowers entered under consignment. As stated in the notice of proposed action and in this notice, 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. It is the importer of record's responsibility to provide to the port the values for entries of flowers entered under consignment. *See* 19 U.S.C. § 1484(a)(1).

In Headquarters Ruling Letter (HQ) 227311, dated September 10, 1999, regarding the exercise of reasonable care by importers in providing initial classification and appraisal information to Customs, a portion of House Report 103-361, Part 1 (November 15, 1993) was cited. The relevant text, which appears at page 136 of the House Report, is as follows:

The requirement that importers use reasonable care in making an entry establishes a "shared responsibility" between the Customs and the trade community, and allows Customs to rely on the accuracy of the information submitted by importers and, in turn, to streamline entry procedures. Under this new provision, the importer will have responsibility to use reasonable care when providing the initial classification and appraisal. In the view of the Committee, it is essential that this "shared responsibility" assure that, at a minimum, "reasonable care" is used in discharging those activities for which the importer has responsibility. These include, but are not limited to: furnishing of information sufficient to allow Customs to fix the final classification and appraisal of merchandise; taking measures that will lead to and assure the preparation of accurate documentation and providing sufficient pricing and financial information to permit proper valuation of merchandise. Section 621 above elaborates on the criteria used in evaluating whether a 'reasonable care' standard is achieved.

In providing the value for flowers entered under consignment, the importer may have knowledge of sales of identical or similar merchandise as defined in 19 U.S.C. § 1401a(h) allowing the use of 19 U.S.C. § 1401a(c). Additionally, the importer, and not the port, would have the information necessary to use the deductive value method under 19 U.S.C. § 1401a(d) to determine the proper value to declare for duty purposes. The port, *i.e.*, Custom and Border Protection, fixes the final appraisal of merchandise under 19 U.S.C. § 1500, but the importer is responsible for providing the initial value amount. The commenter appears to believe it is for the port to provide valuation information to the importer. This is simply not the case.

The argument presented by the commenter that the revocation of the previous treatment will restrict the port's ability to appraise cut flowers entered under consignment is simply not true. The port sought advice from this office due to concerns over the current treatment regarding valuation of this merchandise and we agreed with the port.

Furthermore, with regard to a method of valuation of cut flowers entered under consignment employed by the agency in 1993 and on which it is argued the current treatment method is based, a written statement of the Floral Trade Council, dated July 8, 1993, submitted to the Subcommittee on Oversight, Committee on Ways and Means, "Hearing to Review the U.S. Customs Services's Ability to Determine Accurately the Value of Imported Goods Entering the United States," argued that reliance on sales prices from preceding months led to inaccurate assigned values. Specifically, the statement said:

In this regard, Customs' assigned values are unable to capture the inter-relationship of import volumes and value. For example, in months with holidays, such as February (Valentine's Day) and May (Mother's Day), prices will be higher than average. But, because Customs uses the value

from a previous month to estimate the entered value, the entered value during February and May will undervalue the flowers in those months. Conversely, in March and June, when imports fall off substantially, even though the estimated entered value is relatively high, it will not generate the same revenue lost during high volume (high value) months.

See “U.S. Customs Services’s Ability to Determine Accurately the Value of Imported Goods Entering the United States,” Hearing Before the Subcommittee on Oversight of the Committee on Ways and Means, House of Representatives, 103rd Cong., 1st Sess., 103–20 (June 17, 1993), at 121.

We are not persuaded by the arguments submitted by the commenter seeking withdrawal of the notice of revocation of treatment regarding the valuation of fresh cut flowers entered under consignment discussed herein. Because we find that the valuation methodology used by participating members of the floral association for entries of cut flowers imported on consignment is not in accord with the valuation statute, this decision serves to revoke any treatment that may have been allowed.

HOLDING:

The appraisement of cut flowers entered under consignment using an average price calculated by the floral association is not the proper method under 19 U.S.C. § 1401a. The treatment allowing the use of such prices for appraisement purposes is hereby revoked.

Flowers entered under consignment should be appraised based upon the transaction value of identical merchandise or similar merchandise (19 U.S.C. § 1401a(c)), if possible, deductive value (19 U.S.C. § 1401a(d)) if a value cannot be ascertained under 19 U.S.C. § 1401a(c), and then if unable to ascertain a value upon which to base appraisement, by computed value (19 U.S.C. § 1401a(e))² and “fallback” value (19 U.S.C. § 1401a(f)), in that order. It is the responsibility of the importer to value his merchandise and provide the port with all the necessary information to fix the final appraisement.

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

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

² An importer may elect to have merchandise appraised based on computed value rather than deductive value. See 19 U.S.C. 1401a(a)(2).