

# U.S. Customs and Border Protection

## *CBP Decisions*

### **EXTENSION OF PORT LIMITS OF DAYTON, OHIO, AND TERMINATION OF THE USER-FEE STATUS OF AIRBORNE AIRPARK IN WILMINGTON, OHIO**

**19 CFR PARTS 101 AND 122**

**USCBP-2005-0091**

**CBP Dec. 09-19**

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Homeland Security (DHS) regulations pertaining to Customs and Border Protection's field organization by extending the geographic limits of the port of Dayton, Ohio, to include the Airborne Airpark in Wilmington, Ohio. The extension of the port limits of Dayton, Ohio, is due to the closing of express consignment operations at Dayton International Airport, and the expansion of express consignment operations at Airborne Airpark located in Wilmington, Ohio. The user-fee status of Airborne Airpark is terminated. This change is part of a continuing program to more efficiently utilize Customs and Border Protection's personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

**EFFECTIVE DATE:** [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Wendy M. Cooper, Office of Field Operations, 202-344-2057.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. BACKGROUND**

In a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** (71 FR 67313) on November 21, 2006, the Department of Homeland Security (DHS), Customs and Border Protec-

tion (CBP), proposed to amend the list of CBP ports of entry at 19 CFR 101.3(b)(1) to extend the limits of the port of Dayton, Ohio, to include the Airborne Airpark in Wilmington, Ohio. CBP also proposed to delete “Wilmington, Airport” from the list of user-fee airports at 19 CFR 122.15(b). (As explained in the NPRM, Airborne Park is currently listed, incorrectly, as “Wilmington Airport” in the list of user-fee airports).

The current port limits of the Dayton, Ohio, port of entry are described in Treasury Decision (T.D.) 76–77, effective March 3, 1976. In the proposed rule of November 21, 2006, CBP explained that these limits include the territory within the city limits of Dayton, Ohio, as well as the territory within the township limits of the adjacent townships of Butler, Harrison, Wayne, and Mad River, Ohio. CBP further explained that there had been two express consignment operations in the Dayton area: Menlo Worldwide Forwarding/Emery at Dayton International Airport and Airborne Express at Airborne Airpark in Wilmington, Ohio. The Menlo Worldwide Forwarding/Emery operation was within the Port of Dayton at the north edge of the current port boundaries, and Airborne Airpark was southeast of the current boundaries in Wilmington, Ohio. UPS purchased Menlo Worldwide Forwarding, shut down the Emery operation at Dayton International Airport, and has moved the work to their hub located in Louisville, Kentucky. DHL Express (USA) has purchased Airborne Express and has shut down the DHL operations in Cincinnati-Northern Kentucky Airport (CVG) in Covington, Kentucky. DHL Express (USA) opened a new, much larger combined operation at Airborne Airpark in June 2006. In the NPRM, CBP explained that these changes in operations would result in an increase in the demand for CBP services at the Airborne Airpark.

The NPRM proposed to relocate the CBP Dayton port office from its current location at the Dayton International Airport to a new location near the new DHL operation at Airborne Airpark. In the NPRM, CBP stated that it would establish an adequately sized secure storage facility in efficient proximity to Airborne Airpark. CBP explained that these changes would allow for continued efficient operation and supervision of CBP services at the DHL facility.

## II. ANALYSIS OF COMMENTS

Four comments were received in response to the Notice of Proposed Rulemaking. All four of the commenters expressed either agreement or no objection concerning the proposed extension of the Port of Dayton boundaries and the termination of the user fee airport status of Airborne Airpark in Wilmington, Ohio.

Three of the four commenters, however, raised objections to CBP plans to relocate the Dayton port office. The reasons for these objections included that they believed the Dayton port office should be in

Dayton proper and that shifting the office would have a negative impact on brokers using the services of the port office at the current location.

Although the NPRM stated that if the proposed port limits were adopted as a final rule, the location of the port office in Dayton would be moved, the location of a port office within a port is a management decision by an agency that does not require public notice and comment. The current port office for Dayton is located in Vandalia, Ohio where Dayton International Airport is located – not Dayton. CBP routinely relocates port offices to more efficiently utilize CBP's available personnel, facilities, and resources, and CBP believes that the movement of the office to the new proposed location will maximize efficiency. Also, even though the port office will be moved from its current location, CBP plans to maintain staff at the current location at Dayton International Airport so that brokers may continue to transact business there if they so choose.

### **III. CONCLUSION**

After consideration of the comments received, CBP is extending the geographical limits of the port of Dayton, Ohio, and terminating the user-fee status of Airborne Airpark in Wilmington, Ohio as proposed in the notice. With the closing of express consignment operations at Dayton International Airport and the expansion of such operations at Airborne Park, CBP believes that extending the geographic limits of the port of Dayton, Ohio to include Airborne Park will enable CBP to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. The port of entry description of Dayton, Ohio, and the list of user-fee airports will be revised as proposed in the notice.

### **IV. PORT DESCRIPTION OF DAYTON, OHIO**

The port limits of Dayton, Ohio, expanded to include the Airborne Park, are as follows: Beginning at the point where Federal Interstate Highway 75 crosses the Montgomery County – Miami County line; then west along the Montgomery County line to the point where Frederick Pike intersects the Montgomery County line; then south and east on Frederick Pike to the intersection with Dixie Drive; then south to Keowee Street, then south to Federal Interstate Highway 75 to the point where I-75 intersects the Montgomery County – Warren County line; then east along the county line (which becomes the Greene County – Warren County line) to the Clinton County line; then south along the Clinton County line to the intersection with Ohio State Route 350; then east on Route 350 to the intersection with Ohio State Route 73; then north and west on Route 73 to the intersection with U.S. Route 22; then west along Route 22 to U.S. Highway 68; then north and west on U.S. 68 to the intersection with U.S. Highway 35; then west and north on U.S. 35 to Interstate High-

way 675; then north and east on I-675 to the intersection with Federal Interstate Highway 70; then west on I-70 to the intersection with the Montgomery County line; and then north and west along the Montgomery County line to the point of beginning.

## **V. AUTHORITY**

This change is made under the authority of 5 U.S.C. 301; 19 U.S.C. 2, 66, and 1624; and 6 U.S.C. 203.

## **VI. STATUTORY AND REGULATORY REVIEWS**

### **A. Executive Order 12866: Regulatory Planning and Review**

This rule is not considered to be an economically significant regulatory action under Executive Order 12866 because it will not result in the expenditure of over \$100 million in any one year. The change is intended to expand the geographical boundaries of the Port of Dayton, Ohio, and make it more easily identifiable to the public and to terminate the user fee airport status of Airborne Airpark in Wilmington, Ohio. There are no new costs to the public associated with this rule. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires federal agencies to examine the impact a rule would have on small entities. 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 rule does not directly regulate small entities. The change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. To the extent that all entities are able to more efficiently or conveniently access the facilities and resources within the expanded geographical area of the new port limits, this rule should confer benefits to CBP, carriers, importers, and the general public.

Because this rule does not directly regulate small entities, CBP certifies that this rule does not have a significant economic impact on a substantial number of small entities.

## **VII. SIGNING AUTHORITY**

The signing authority for this document falls under 19 CFR 0.2(a) because the port extension is not within the bounds of those regula-

tions for which the Secretary of the Treasury has retained sole authority. Accordingly, this final rule may be signed by the Secretary of Homeland Security (or his or her delegate).

### LIST OF SUBJECTS

#### 19 CFR PART 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

#### 19 CFR PART 122

Customs duties and inspection, Airports, Imports, Organization and functions (Government agencies).

### AMENDMENTS TO CBP REGULATIONS

For the reasons set forth above, part 101, CBP Regulations (19 CFR part 101) and part 122, CBP Regulations (19 CFR part 122), are amended as set forth below.

#### PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citation for section 101.3 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.

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

\* \* \* \* \*

2. The list of ports in section 101.3(b)(1) is amended by removing from the “Limits of Port” column for Dayton, Ohio, the present limits description “Including territory described in T.D. 76–77” and substituting the following: “CBP Dec. 09–19.”

#### PART 122—AIR COMMERCE REGULATIONS

3. The general authority for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

\* \* \* \* \*

4. The list of user fee airports at 19 CFR 122.15(b) is amended by removing “Wilmington, Ohio” from the “Location” column and, on the same line, “Wilmington Airport” from the “Name” column.

June 10, 2009

JANET NAPOLITANO,  
*Secretary.*

[Published in the Federal Register, June 17, 2009 (74 FR 28601)]

(CBP Dec. 09–20)

## FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST  
FOR JANUARY, 2009

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): January 1, 2009  
January 19, 2009

European Union euro:

January 1, 2009	1.391900
January 2, 2009	1.394600
January 3, 2009	1.394600
January 4, 2009	1.394600
January 5, 2009	1.357600
January 6, 2009	1.344500
January 7, 2009	1.371800
January 8, 2009	1.371400
January 9, 2009	1.349500
January 10, 2009	1.349500
January 11, 2009	1.349500
January 12, 2009	1.334700
January 13, 2009	1.319800
January 14, 2009	1.317400
January 15, 2009	1.309400
January 16, 2009	1.324400
January 17, 2009	1.324400
January 18, 2009	1.324400
January 19, 2009	1.324400
January 20, 2009	1.294600
January 21, 2009	1.287000
January 22, 2009	1.295500
January 23, 2009	1.284900
January 24, 2009	1.284900
January 25, 2009	1.284900
January 26, 2009	1.315700
January 27, 2009	1.315900
January 28, 2009	1.324400
January 29, 2009	1.298800
January 30, 2009	1.280400
January 31, 2009	1.280400

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly  
list for January, 2009 (continued):

South Korea won:

January 1, 2009 .....	0.000792
January 2, 2009 .....	0.000759
January 3, 2009 .....	0.000759
January 4, 2009 .....	0.000759
January 5, 2009 .....	0.000761
January 6, 2009 .....	0.000765
January 7, 2009 .....	0.000774
January 8, 2009 .....	0.000753
January 9, 2009 .....	0.000742
January 10, 2009 .....	0.000742
January 11, 2009 .....	0.000742
January 12, 2009 .....	0.000741
January 13, 2009 .....	0.000739
January 14, 2009 .....	0.000739
January 15, 2009 .....	0.000719
January 16, 2009 .....	0.000740
January 17, 2009 .....	0.000740
January 18, 2009 .....	0.000740
January 19, 2009 .....	0.000740
January 20, 2009 .....	0.000740
January 21, 2009 .....	0.000731
January 22, 2009 .....	0.000728
January 23, 2009 .....	0.000719
January 24, 2009 .....	0.000719
January 25, 2009 .....	0.000719
January 26, 2009 .....	0.000719
January 27, 2009 .....	0.000719
January 28, 2009 .....	0.000730
January 29, 2009 .....	0.000730
January 30, 2009 .....	0.000725
January 31, 2009 .....	0.000725

Taiwan N.T. dollar:

January 1, 2009 .....	0.030525
January 2, 2009 .....	0.030469
January 3, 2009 .....	0.030469
January 4, 2009 .....	0.030469
January 5, 2009 .....	0.030303
January 6, 2009 .....	0.030211
January 7, 2009 .....	0.030276
January 8, 2009 .....	0.030211
January 9, 2009 .....	0.030175
January 10, 2009 .....	0.030175
January 11, 2009 .....	0.030175
January 12, 2009 .....	0.030075
January 13, 2009 .....	0.030093
January 14, 2009 .....	0.030120
January 15, 2009 .....	0.029976
January 16, 2009 .....	0.029994
January 17, 2009 .....	0.029994
January 18, 2009 .....	0.029994

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for January, 2009 (continued):

Taiwan N.T. dollar: (continued):

January 19, 2009 .....	0.029994
January 20, 2009 .....	0.029735
January 21, 2009 .....	0.029780
January 22, 2009 .....	0.029824
January 23, 2009 .....	0.029691
January 24, 2009 .....	0.029691
January 25, 2009 .....	0.029691
January 26, 2009 .....	0.029691
January 27, 2009 .....	0.029691
January 28, 2009 .....	0.029691
January 29, 2009 .....	0.029709
January 30, 2009 .....	0.029674
January 31, 2009 .....	0.029674

Dated: February 1, 2009

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange.*

(CBP Dec.09–21)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JANUARY, 2009

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 09–09 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): January 1, 2009  
January 19, 2009

Australia dollar:

January 13, 2009 .....	0.667500
January 14, 2009 .....	0.664000
January 15, 2009 .....	0.655800
January 16, 2009 .....	0.666000
January 17, 2009 .....	0.666000
January 18, 2009 .....	0.666000
January 19, 2009 .....	0.666000
January 20, 2009 .....	0.657400



## FOREIGN CURRENCIES—Variances from quarterly rates for January, 2009 (continued):

## Australia dollar: (continued):

January 21, 2009 .....	0.649500
January 22, 2009 .....	0.654400
January 23, 2009 .....	0.652200
January 24, 2009 .....	0.652200
January 25, 2009 .....	0.652200
January 26, 2009 .....	0.661000
January 27, 2009 .....	0.660200
January 28, 2009 .....	0.669900
January 29, 2009 .....	0.655000

## Brazil real:

January 6, 2009 .....	0.456725
-----------------------	----------

## Canada dollar:

January 21, 2009 .....	0.784375
------------------------	----------

## Denmark krone:

January 13, 2009 .....	0.177113
January 14, 2009 .....	0.176832
January 15, 2009 .....	0.175775
January 16, 2009 .....	0.177699
January 17, 2009 .....	0.177699
January 18, 2009 .....	0.177699
January 19, 2009 .....	0.177699
January 20, 2009 .....	0.173777
January 21, 2009 .....	0.172697
January 22, 2009 .....	0.173831
January 23, 2009 .....	0.172393
January 24, 2009 .....	0.172393
January 25, 2009 .....	0.172393
January 26, 2009 .....	0.176519
January 27, 2009 .....	0.176538
January 28, 2009 .....	0.177816
January 29, 2009 .....	0.174310
January 30, 2009 .....	0.171774
January 31, 2009 .....	0.171774

## New Zealand dollar:

January 13, 2009 .....	0.552300
January 14, 2009 .....	0.542900
January 15, 2009 .....	0.530500
January 16, 2009 .....	0.541500
January 17, 2009 .....	0.541500
January 18, 2009 .....	0.541500
January 19, 2009 .....	0.541500
January 20, 2009 .....	0.527300
January 21, 2009 .....	0.521500
January 22, 2009 .....	0.526500
January 23, 2009 .....	0.527000
January 24, 2009 .....	0.527000

## FOREIGN CURRENCIES—Variances from quarterly rates for January, 2009 (continued):

## New Zealand dollar: (continued):

January 25, 2009 .....	0.527000
January 26, 2009 .....	0.530600
January 27, 2009 .....	0.528400
January 28, 2009 .....	0.534500
January 29, 2009 .....	0.516100
January 30, 2009 .....	0.508400
January 31, 2009 .....	0.508400

## Republic of South Africa rand:

January 9, 2009 .....	0.102197
January 10, 2009 .....	0.102197
January 11, 2009 .....	0.102197
January 12, 2009 .....	0.099010
January 13, 2009 .....	0.099950
January 14, 2009 .....	0.098522
January 15, 2009 .....	0.098756
January 16, 2009 .....	0.099552
January 17, 2009 .....	0.099552
January 18, 2009 .....	0.099552
January 19, 2009 .....	0.099552
January 20, 2009 .....	0.098338
January 21, 2009 .....	0.098348
January 22, 2009 .....	0.098858
January 23, 2009 .....	0.097371
January 24, 2009 .....	0.097371
January 25, 2009 .....	0.097371
January 26, 2009 .....	0.098804
January 27, 2009 .....	0.100251
January 28, 2009 .....	0.100985
January 29, 2009 .....	0.100281
January 30, 2009 .....	0.098039
January 31, 2009 .....	0.098039

## Sweden krona:

January 13, 2009 .....	0.121331
January 14, 2009 .....	0.119117
January 15, 2009 .....	0.119636
January 16, 2009 .....	0.121936
January 17, 2009 .....	0.121936
January 18, 2009 .....	0.121936
January 19, 2009 .....	0.121936
January 20, 2009 .....	0.119148
January 21, 2009 .....	0.119913
January 22, 2009 .....	0.121464
January 23, 2009 .....	0.121221
January 24, 2009 .....	0.121221
January 25, 2009 .....	0.121221
January 30, 2009 .....	0.119550
January 31, 2009 .....	0.119550

## FOREIGN CURRENCIES—Variances from quarterly rates for January, 2009 (continued):

## Switzerland franc:

January 15, 2009 .....	0.890313
January 20, 2009 .....	0.874738
January 21, 2009 .....	0.871612
January 22, 2009 .....	0.866701
January 23, 2009 .....	0.859919
January 24, 2009 .....	0.859919
January 25, 2009 .....	0.859919
January 26, 2009 .....	0.874355
January 27, 2009 .....	0.878117
January 28, 2009 .....	0.873973
January 29, 2009 .....	0.869036
January 30, 2009 .....	0.861178
January 31, 2009 .....	0.861178

## United Kingdom pound sterling:

January 7, 2009 .....	1.525400
January 21, 2009 .....	1.372800
January 23, 2009 .....	1.365800
January 24, 2009 .....	1.365800
January 25, 2009 .....	1.365800

Dated: February 1, 2009

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange.*

(CBP Dec. 09–22)

## FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR  
FEBRUARY, 2009

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): February 16, 2009

## European Union euro:

February 1, 2009 .....	1.280400
February 2, 2009 .....	1.280800
February 3, 2009 .....	1.301000
February 4, 2009 .....	1.285700

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly  
list for February, 2009 (continued):

European Union euro: (continued):

February 5, 2009 .....	1.283800
February 6, 2009 .....	1.287400
February 7, 2009 .....	1.287400
February 8, 2009 .....	1.287400
February 9, 2009 .....	1.306400
February 10, 2009 .....	1.296600
February 11, 2009 .....	1.289300
February 12, 2009 .....	1.282200
February 13, 2009 .....	1.287900
February 14, 2009 .....	1.287900
February 15, 2009 .....	1.287900
February 16, 2009 .....	1.287900
February 17, 2009 .....	1.257100
February 18, 2009 .....	1.254700
February 19, 2009 .....	1.267500
February 20, 2009 .....	1.269000
February 21, 2009 .....	1.269000
February 22, 2009 .....	1.269000
February 23, 2009 .....	1.274700
February 24, 2009 .....	1.274200
February 25, 2009 .....	1.273100
February 26, 2009 .....	1.276400
February 27, 2009 .....	1.266200
February 28, 2009 .....	1.266200

South Korea won:

February 1, 2009 .....	0.000725
February 2, 2009 .....	0.000719
February 3, 2009 .....	0.000717
February 4, 2009 .....	0.000725
February 5, 2009 .....	0.000722
February 6, 2009 .....	0.000731
February 7, 2009 .....	0.000731
February 8, 2009 .....	0.000731
February 9, 2009 .....	0.000728
February 10, 2009 .....	0.000720
February 11, 2009 .....	0.000719
February 12, 2009 .....	0.000717
February 13, 2009 .....	0.000713
February 14, 2009 .....	0.000713
February 15, 2009 .....	0.000713
February 16, 2009 .....	0.000713
February 17, 2009 .....	0.000687
February 18, 2009 .....	0.000685
February 19, 2009 .....	0.000675
February 20, 2009 .....	0.000658
February 21, 2009 .....	0.000658
February 22, 2009 .....	0.000658
February 23, 2009 .....	0.000669
February 24, 2009 .....	0.000660
February 25, 2009 .....	0.000660

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly  
list for February, 2009 (continued):

South Korea won: (continued):

February 26, 2009 .....	0.000661
February 27, 2009 .....	0.000652
February 28, 2009 .....	0.000652

Taiwan N.T. dollar:

February 1, 2009 .....	0.029674
February 2, 2009 .....	0.029674
February 3, 2009 .....	0.029656
February 4, 2009 .....	0.029709
February 5, 2009 .....	0.029709
February 6, 2009 .....	0.029753
February 7, 2009 .....	0.029753
February 8, 2009 .....	0.029753
February 9, 2009 .....	0.029665
February 10, 2009 .....	0.029455
February 11, 2009 .....	0.029438
February 12, 2009 .....	0.029394
February 13, 2009 .....	0.029386
February 14, 2009 .....	0.029386
February 15, 2009 .....	0.029386
February 16, 2009 .....	0.029386
February 17, 2009 .....	0.028918
February 18, 2009 .....	0.028877
February 19, 2009 .....	0.028918
February 20, 2009 .....	0.028736
February 21, 2009 .....	0.028736
February 22, 2009 .....	0.028736
February 23, 2009 .....	0.028893
February 24, 2009 .....	0.028794
February 25, 2009 .....	0.028785
February 26, 2009 .....	0.028703
February 27, 2009 .....	0.028571
February 28, 2009 .....	0.028571

Dated: March 1, 2009

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange.*

(CBP Dec. 09–23)

## FOREIGN CURRENCIES

## VARIANCES FROM QUARTERLY RATES FOR FEBRUARY, 2009

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 09–11 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): February 16, 2009

## Australia dollar:

February 2, 2009 .....	0.632000
February 3, 2009 .....	0.647600
February 4, 2009 .....	0.649900
February 5, 2009 .....	0.653900
February 6, 2009 .....	0.671500
February 7, 2009 .....	0.671500
February 8, 2009 .....	0.671500
February 10, 2009 .....	0.658900
February 11, 2009 .....	0.654900
February 12, 2009 .....	0.650700
February 13, 2009 .....	0.659500
February 14, 2009 .....	0.659500
February 15, 2009 .....	0.659500
February 16, 2009 .....	0.659500
February 17, 2009 .....	0.638600
February 18, 2009 .....	0.638500
February 19, 2009 .....	0.645000
February 20, 2009 .....	0.641900
February 21, 2009 .....	0.641900
February 22, 2009 .....	0.641900
February 23, 2009 .....	0.645600
February 24, 2009 .....	0.642900
February 25, 2009 .....	0.647600
February 26, 2009 .....	0.653600
February 27, 2009 .....	0.641900
February 28, 2009 .....	0.641900

## Canada dollar:

February 27, 2009 .....	0.786782
February 28, 2009 .....	0.786782

## Denmark krone:

February 1, 2009 .....	0.171774
February 2, 2009 .....	0.171830
February 3, 2009 .....	0.174621
February 4, 2009 .....	0.172560
February 5, 2009 .....	0.172331

## FOREIGN CURRENCIES—Variances from quarterly rates for February, 2009 (continued):

## Denmark krone: (continued):

February 6, 2009 .....	0.172831
February 7, 2009 .....	0.172831
February 8, 2009 .....	0.172831
February 9, 2009 .....	0.175300
February 10, 2009 .....	0.174031
February 11, 2009 .....	0.173040
February 12, 2009 .....	0.172073
February 13, 2009 .....	0.172834
February 14, 2009 .....	0.172834
February 15, 2009 .....	0.172834
February 16, 2009 .....	0.172834
February 17, 2009 .....	0.168699
February 18, 2009 .....	0.168432
February 19, 2009 .....	0.170184
February 20, 2009 .....	0.170268
February 21, 2009 .....	0.170268
February 22, 2009 .....	0.170268
February 23, 2009 .....	0.171086
February 24, 2009 .....	0.171072
February 25, 2009 .....	0.170928
February 26, 2009 .....	0.171383
February 27, 2009 .....	0.169976
February 28, 2009 .....	0.169976

## India rupee:

February 27, 2009 .....	0.019654
February 28, 2009 .....	0.019654

## Japan yen:

February 24, 2009 .....	0.010352
February 25, 2009 .....	0.010274
February 26, 2009 .....	0.010147
February 27, 2009 .....	0.010231
February 28, 2009 .....	0.010231

## Malaysia ringgit:

February 18, 2009 .....	0.273448
February 19, 2009 .....	0.273373
February 20, 2009 .....	0.272183
February 21, 2009 .....	0.272183
February 22, 2009 .....	0.272183
February 23, 2009 .....	0.273748
February 24, 2009 .....	0.273000
February 25, 2009 .....	0.272702
February 26, 2009 .....	0.272628
February 27, 2009 .....	0.269906
February 28, 2009 .....	0.269906

## FOREIGN CURRENCIES—Variances from quarterly rates for February, 2009 (continued):

## Mexico peso:

February 2, 2009 .....	0.068985
February 3, 2009 .....	0.068573
February 11, 2009 .....	0.068765
February 12, 2009 .....	0.068549
February 17, 2009 .....	0.068395
February 18, 2009 .....	0.068245
February 19, 2009 .....	0.068545
February 20, 2009 .....	0.067404
February 21, 2009 .....	0.067404
February 22, 2009 .....	0.067404
February 23, 2009 .....	0.067295
February 24, 2009 .....	0.067408
February 25, 2009 .....	0.066997
February 26, 2009 .....	0.066787
February 27, 2009 .....	0.066278
February 28, 2009 .....	0.066278

## New Zealand dollar:

February 1, 2009 .....	0.508400
February 2, 2009 .....	0.502600
February 3, 2009 .....	0.511300
February 4, 2009 .....	0.511700
February 5, 2009 .....	0.515500
February 6, 2009 .....	0.530000
February 7, 2009 .....	0.530000
February 8, 2009 .....	0.530000
February 9, 2009 .....	0.544200
February 10, 2009 .....	0.528600
February 11, 2009 .....	0.526000
February 12, 2009 .....	0.520300
February 13, 2009 .....	0.526600
February 14, 2009 .....	0.526600
February 15, 2009 .....	0.526600
February 16, 2009 .....	0.526600
February 17, 2009 .....	0.511000
February 18, 2009 .....	0.510700
February 19, 2009 .....	0.512300
February 20, 2009 .....	0.507400
February 21, 2009 .....	0.507400
February 22, 2009 .....	0.507400
February 23, 2009 .....	0.510200
February 24, 2009 .....	0.509900
February 25, 2009 .....	0.511700
February 26, 2009 .....	0.511300
February 27, 2009 .....	0.503000
February 28, 2009 .....	0.503000

## Republic of South Africa rand:

February 1, 2009 .....	0.098039
February 2, 2009 .....	0.098280
February 3, 2009 .....	0.099053



## FOREIGN CURRENCIES—Variances from quarterly rates for February, 2009 (continued):

## Republic of South Africa rand: (continued):

February 4, 2009 .....	0.100200
February 5, 2009 .....	0.101415
February 11, 2009 .....	0.101240
February 12, 2009 .....	0.099255
February 13, 2009 .....	0.100659
February 14, 2009 .....	0.100659
February 15, 2009 .....	0.100659
February 16, 2009 .....	0.100659
February 17, 2009 .....	0.097561
February 18, 2009 .....	0.098184
February 19, 2009 .....	0.099330
February 20, 2009 .....	0.098328
February 21, 2009 .....	0.098328
February 22, 2009 .....	0.098328
February 23, 2009 .....	0.099602
February 24, 2009 .....	0.100100
February 25, 2009 .....	0.100594
February 26, 2009 .....	0.101215
February 27, 2009 .....	0.099651
February 28, 2009 .....	0.099651

## Singapore dollar:

February 17, 2009 .....	0.654322
February 18, 2009 .....	0.652912
February 19, 2009 .....	0.655136
February 20, 2009 .....	0.651211
February 21, 2009 .....	0.651211
February 22, 2009 .....	0.651211
February 23, 2009 .....	0.654022
February 24, 2009 .....	0.654664
February 25, 2009 .....	0.653851
February 26, 2009 .....	0.650745
February 27, 2009 .....	0.646789
February 28, 2009 .....	0.646789

## Sweden krona:

February 1, 2009 .....	0.119550
February 2, 2009 .....	0.119288
February 3, 2009 .....	0.121102
February 4, 2009 .....	0.120820
February 5, 2009 .....	0.120941
February 6, 2009 .....	0.122332
February 7, 2009 .....	0.122332
February 8, 2009 .....	0.122332
February 10, 2009 .....	0.121969
February 11, 2009 .....	0.119283
February 12, 2009 .....	0.118624
February 13, 2009 .....	0.119760
February 14, 2009 .....	0.119760
February 15, 2009 .....	0.119760
February 16, 2009 .....	0.119760

## FOREIGN CURRENCIES—Variances from quarterly rates for February, 2009 (continued):

## Sweden krona: (continued):

February 17, 2009 .....	0.113384
February 18, 2009 .....	0.114197
February 19, 2009 .....	0.114587
February 20, 2009 .....	0.113613
February 21, 2009 .....	0.113613
February 22, 2009 .....	0.113613
February 23, 2009 .....	0.114153
February 24, 2009 .....	0.112082
February 25, 2009 .....	0.112137
February 26, 2009 .....	0.112070
February 27, 2009 .....	0.110816
February 28, 2009 .....	0.110816

## Switzerland franc:

February 1, 2009 .....	0.861178
February 2, 2009 .....	0.859107
February 3, 2009 .....	0.875733
February 4, 2009 .....	0.863632
February 5, 2009 .....	0.858074
February 6, 2009 .....	0.855139
February 7, 2009 .....	0.855139
February 8, 2009 .....	0.855139
February 9, 2009 .....	0.864603
February 10, 2009 .....	0.866927
February 11, 2009 .....	0.862143
February 12, 2009 .....	0.859550
February 13, 2009 .....	0.863483
February 14, 2009 .....	0.863483
February 15, 2009 .....	0.863483
February 16, 2009 .....	0.863483
February 17, 2009 .....	0.851499
February 18, 2009 .....	0.846525
February 19, 2009 .....	0.851644
February 20, 2009 .....	0.856091
February 21, 2009 .....	0.856091
February 22, 2009 .....	0.856091
February 23, 2009 .....	0.859623
February 24, 2009 .....	0.856898
February 25, 2009 .....	0.858664
February 26, 2009 .....	0.858590
February 27, 2009 .....	0.856751
February 28, 2009 .....	0.856751

Dated: March 1, 2009

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange*

(CBP Dec. 09–24)

## FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR  
MARCH, 2009

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): none

## European Union euro:

March 1, 2009 .....	1.266200
March 2, 2009 .....	1.258000
March 3, 2009 .....	1.254900
March 4, 2009 .....	1.260700
March 5, 2009 .....	1.256500
March 6, 2009 .....	1.267400
March 7, 2009 .....	1.267400
March 8, 2009 .....	1.267400
March 9, 2009 .....	1.263600
March 10, 2009 .....	1.275200
March 11, 2009 .....	1.277400
March 12, 2009 .....	1.279900
March 13, 2009 .....	1.289100
March 14, 2009 .....	1.289100
March 15, 2009 .....	1.289100
March 16, 2009 .....	1.299700
March 17, 2009 .....	1.297200
March 18, 2009 .....	1.311000
March 19, 2009 .....	1.373000
March 20, 2009 .....	1.356600
March 21, 2009 .....	1.356600
March 22, 2009 .....	1.356600
March 23, 2009 .....	1.356900
March 24, 2009 .....	1.352400
March 25, 2009 .....	1.353900
March 26, 2009 .....	1.356000
March 27, 2009 .....	1.330600
March 28, 2009 .....	1.330600
March 29, 2009 .....	1.330600
March 30, 2009 .....	1.314600
March 31, 2009 .....	1.326100

## South Korea won:

March 1, 2009 .....	0.000652
March 2, 2009 .....	0.000637
March 3, 2009 .....	0.000645
March 4, 2009 .....	0.000645
March 5, 2009 .....	0.000638

## FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for March, 2009 (continued):

## South Korea won: (continued):

March 6, 2009 .....	0.000645
March 7, 2009 .....	0.000645
March 8, 2009 .....	0.000645
March 9, 2009 .....	0.000649
March 10, 2009 .....	0.000666
March 11, 2009 .....	0.000682
March 12, 2009 .....	0.000669
March 13, 2009 .....	0.000675
March 14, 2009 .....	0.000675
March 15, 2009 .....	0.000675
March 16, 2009 .....	0.000697
March 17, 2009 .....	0.000706
March 18, 2009 .....	0.000710
March 19, 2009 .....	0.000720
March 20, 2009 .....	0.000716
March 21, 2009 .....	0.000716
March 22, 2009 .....	0.000716
March 23, 2009 .....	0.000723
March 24, 2009 .....	0.000725
March 25, 2009 .....	0.000734
March 26, 2009 .....	0.000749
March 27, 2009 .....	0.000740
March 28, 2009 .....	0.000740
March 29, 2009 .....	0.000740
March 30, 2009 .....	0.000718
March 31, 2009 .....	0.000729

## Taiwan N.T. dollar:

March 1, 2009 .....	0.028571
March 2, 2009 .....	0.028401
March 3, 2009 .....	0.028506
March 4, 2009 .....	0.028531
March 5, 2009 .....	0.027678
March 6, 2009 .....	0.028852
March 7, 2009 .....	0.028852
March 8, 2009 .....	0.028852
March 9, 2009 .....	0.028727
March 10, 2009 .....	0.028918
March 11, 2009 .....	0.029019
March 12, 2009 .....	0.029002
March 13, 2009 .....	0.028994
March 14, 2009 .....	0.028994
March 15, 2009 .....	0.028994
March 16, 2009 .....	0.029070
March 17, 2009 .....	0.029231
March 18, 2009 .....	0.029257
March 19, 2009 .....	0.029499
March 20, 2009 .....	0.029630
March 21, 2009 .....	0.029630
March 22, 2009 .....	0.029630
March 23, 2009 .....	0.029612

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for March, 2009 (continued):

Taiwan N.T. dollar: (continued):

March 24, 2009 .....	0.029612
March 25, 2009 .....	0.029568
March 26, 2009 .....	0.029630
March 27, 2009 .....	0.029621
March 28, 2009 .....	0.029621
March 29, 2009 .....	0.029621
March 30, 2009 .....	0.029621
March 31, 2009 .....	0.029525

Dated: April 1, 2009

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange.*



(CBP Dec. 09–25)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR MARCH, 2009

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 09–13 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): none

Australia dollar:

March 1, 2009 .....	0.641900
March 2, 2009 .....	0.630100
March 3, 2009 .....	0.638800
March 4, 2009 .....	0.649900
March 5, 2009 .....	0.640800
March 6, 2009 .....	0.640800
March 7, 2009 .....	0.640800
March 8, 2009 .....	0.640800
March 9, 2009 .....	0.631100
March 10, 2009 .....	0.647300
March 11, 2009 .....	0.649700
March 12, 2009 .....	0.647300
March 13, 2009 .....	0.657600
March 14, 2009 .....	0.657600

## FOREIGN CURRENCIES—Variances from quarterly rates for March, 2009 (continued):

## Australia dollar: (continued):

March 15, 2009 .....	0.657600
March 16, 2009 .....	0.661100
March 17, 2009 .....	0.659100
March 18, 2009 .....	0.658900

## Brazil real:

March 3, 2009 .....	0.409500
---------------------	----------

## Canada dollar:

March 1, 2009 .....	0.786782
March 2, 2009 .....	0.775735
March 3, 2009 .....	0.772977
March 4, 2009 .....	0.783208
March 5, 2009 .....	0.776699
March 6, 2009 .....	0.777303
March 7, 2009 .....	0.777303
March 8, 2009 .....	0.777303
March 9, 2009 .....	0.769527
March 10, 2009 .....	0.781494
March 11, 2009 .....	0.780762
March 12, 2009 .....	0.774653
March 13, 2009 .....	0.784191
March 14, 2009 .....	0.784191
March 15, 2009 .....	0.784191
March 16, 2009 .....	0.785978
March 17, 2009 .....	0.786349
March 18, 2009 .....	0.786473

## Denmark krone:

March 1, 2009 .....	0.169976
March 2, 2009 .....	0.168836
March 3, 2009 .....	0.168438
March 4, 2009 .....	0.169256
March 5, 2009 .....	0.168620
March 6, 2009 .....	0.170106
March 7, 2009 .....	0.170106
March 8, 2009 .....	0.170106
March 9, 2009 .....	0.169655
March 10, 2009 .....	0.171177
March 11, 2009 .....	0.171497
March 12, 2009 .....	0.171765
March 13, 2009 .....	0.172909
March 14, 2009 .....	0.172909
March 15, 2009 .....	0.172909
March 16, 2009 .....	0.174359
March 17, 2009 .....	0.174043
March 18, 2009 .....	0.175951
March 30, 2009 .....	0.176494
March 31, 2009 .....	0.178085

## FOREIGN CURRENCIES—Variances from quarterly rates for March, 2009 (continued):

## India rupees:

March 1, 2009 .....	0.019654
March 2, 2009 .....	0.019305
March 3, 2009 .....	0.019246
March 4, 2009 .....	0.019406
March 5, 2009 .....	0.019380
March 6, 2009 .....	0.019350
March 7, 2009 .....	0.019350
March 8, 2009 .....	0.019350
March 9, 2009 .....	0.019264
March 10, 2009 .....	0.019474
March 11, 2009 .....	0.019616
March 12, 2009 .....	0.019346
March 13, 2009 .....	0.019402
March 14, 2009 .....	0.019402
March 15, 2009 .....	0.019402
March 16, 2009 .....	0.019489
March 17, 2009 .....	0.019448
March 18, 2009 .....	0.019524
March 30, 2009 .....	0.019562
March 31, 2009 .....	0.019658

## Japan yen:

March 1, 2009 .....	0.010231
March 2, 2009 .....	0.010291
March 3, 2009 .....	0.010187
March 4, 2009 .....	0.010066
March 5, 2009 .....	0.010171
March 6, 2009 .....	0.010217
March 7, 2009 .....	0.010217
March 8, 2009 .....	0.010217
March 9, 2009 .....	0.010114
March 10, 2009 .....	0.010164
March 11, 2009 .....	0.010231
March 12, 2009 .....	0.010219
March 13, 2009 .....	0.010200
March 14, 2009 .....	0.010200
March 15, 2009 .....	0.010200
March 16, 2009 .....	0.010186
March 17, 2009 .....	0.010116
March 18, 2009 .....	0.010196
March 20, 2009 .....	0.010397
March 21, 2009 .....	0.010397
March 22, 2009 .....	0.010397
March 23, 2009 .....	0.010277
March 24, 2009 .....	0.010219
March 25, 2009 .....	0.010235
March 26, 2009 .....	0.010155
March 27, 2009 .....	0.010205
March 28, 2009 .....	0.010205
March 29, 2009 .....	0.010205
March 30, 2009 .....	0.010263
March 31, 2009 .....	0.010086

## FOREIGN CURRENCIES—Variances from quarterly rates for March, 2009 (continued):

## Malaysia ringgit:

March 1, 2009 .....	0.269906
March 2, 2009 .....	0.269384
March 3, 2009 .....	0.269760
March 4, 2009 .....	0.269469
March 5, 2009 .....	0.268456
March 6, 2009 .....	0.269179
March 7, 2009 .....	0.269179
March 8, 2009 .....	0.269179
March 9, 2009 .....	0.269179
March 10, 2009 .....	0.271003
March 11, 2009 .....	0.270709
March 12, 2009 .....	0.271003
March 13, 2009 .....	0.269978
March 14, 2009 .....	0.269978
March 15, 2009 .....	0.269978
March 16, 2009 .....	0.273149
March 17, 2009 .....	0.272294
March 18, 2009 .....	0.271739
March 19, 2009 .....	0.273973
March 20, 2009 .....	0.274725
March 21, 2009 .....	0.274725
March 22, 2009 .....	0.274725
March 23, 2009 .....	0.274650
March 30, 2009 .....	0.273973
March 31, 2009 .....	0.274499

## Mexico peso:

March 1, 2009 .....	0.066278
March 2, 2009 .....	0.064910
March 3, 2009 .....	0.065185
March 4, 2009 .....	0.065898
March 5, 2009 .....	0.065294
March 6, 2009 .....	0.065557
March 7, 2009 .....	0.065557
March 8, 2009 .....	0.065557
March 9, 2009 .....	0.065011
March 10, 2009 .....	0.065414
March 11, 2009 .....	0.065927
March 12, 2009 .....	0.067014
March 13, 2009 .....	0.068564
March 14, 2009 .....	0.068564
March 15, 2009 .....	0.068564

## New Zealand dollar:

March 1, 2009 .....	0.503000
March 2, 2009 .....	0.492600
March 3, 2009 .....	0.495200
March 4, 2009 .....	0.506000
March 5, 2009 .....	0.501500
March 6, 2009 .....	0.504100
March 7, 2009 .....	0.504100



## FOREIGN CURRENCIES—Variances from quarterly rates for March, 2009 (continued):

## New Zealand dollar: (continued):

March 8, 2009 .....	0.504100
March 9, 2009 .....	0.492700
March 10, 2009 .....	0.503100
March 11, 2009 .....	0.506400
March 12, 2009 .....	0.514000
March 13, 2009 .....	0.524400
March 14, 2009 .....	0.524400
March 15, 2009 .....	0.524400
March 16, 2009 .....	0.532000
March 17, 2009 .....	0.528400
March 18, 2009 .....	0.528500

## Norway krone:

March 3, 2009 .....	0.137404
March 19, 2009 .....	0.158403
March 20, 2009 .....	0.156752
March 21, 2009 .....	0.156752
March 22, 2009 .....	0.156752
March 23, 2009 .....	0.158050
March 24, 2009 .....	0.157451
March 25, 2009 .....	0.153626
March 26, 2009 .....	0.153681

## Republic of South Africa rand:

March 1, 2009 .....	0.099651
March 2, 2009 .....	0.095238
March 3, 2009 .....	0.095012
March 4, 2009 .....	0.096525
March 5, 2009 .....	0.093963
March 6, 2009 .....	0.096061
March 7, 2009 .....	0.096061
March 8, 2009 .....	0.096061
March 9, 2009 .....	0.094429
March 10, 2009 .....	0.097201
March 11, 2009 .....	0.098571
March 12, 2009 .....	0.100402
March 13, 2009 .....	0.100025
March 14, 2009 .....	0.100025
March 15, 2009 .....	0.100025
March 16, 2009 .....	0.101420
March 17, 2009 .....	0.100175
March 18, 2009 .....	0.100705

## Singapore dollar:

March 1, 2009 .....	0.646789
March 2, 2009 .....	0.642467
March 3, 2009 .....	0.644081
March 4, 2009 .....	0.647165
March 5, 2009 .....	0.643832
March 6, 2009 .....	0.647249

## FOREIGN CURRENCIES—Variances from quarterly rates for March, 2009 (continued):

## Singapore dollar: (continued):

March 7, 2009 .....	0.647249
March 8, 2009 .....	0.647249
March 9, 2009 .....	0.645619
March 10, 2009 .....	0.651636
March 11, 2009 .....	0.652955
March 12, 2009 .....	0.651254
March 13, 2009 .....	0.648130
March 14, 2009 .....	0.648130
March 15, 2009 .....	0.648130
March 16, 2009 .....	0.653168
March 17, 2009 .....	0.652529
March 18, 2009 .....	0.654836

## Sweden krone:

March 1, 2009 .....	0.110816
March 2, 2009 .....	0.108749
March 3, 2009 .....	0.107840
March 4, 2009 .....	0.110182
March 5, 2009 .....	0.107686
March 6, 2009 .....	0.108681
March 7, 2009 .....	0.108681
March 8, 2009 .....	0.108681
March 9, 2009 .....	0.109769
March 10, 2009 .....	0.112547
March 11, 2009 .....	0.113758
March 12, 2009 .....	0.114407
March 13, 2009 .....	0.115778
March 14, 2009 .....	0.115778
March 15, 2009 .....	0.115778
March 16, 2009 .....	0.118420
March 17, 2009 .....	0.117593
March 18, 2009 .....	0.119363
March 30, 2009 .....	0.120009
March 31, 2009 .....	0.121180

## Switzerland franc:

March 1, 2009 .....	0.856751
March 2, 2009 .....	0.853024
March 3, 2009 .....	0.850702
March 4, 2009 .....	0.850196
March 5, 2009 .....	0.852733
March 6, 2009 .....	0.867679
March 7, 2009 .....	0.867679
March 8, 2009 .....	0.867679
March 9, 2009 .....	0.859550
March 10, 2009 .....	0.866551
March 11, 2009 .....	0.863185
March 12, 2009 .....	0.840831
March 13, 2009 .....	0.841751
March 14, 2009 .....	0.841751
March 15, 2009 .....	0.841751

## FOREIGN CURRENCIES—Variances from quarterly rates for March, 2009 (continued):

## Switzerland franc: (continued):

March 16, 2009 .....	0.846095
March 17, 2009 .....	0.845594
March 18, 2009 .....	0.857118
March 20, 2009 .....	0.889442
March 21, 2009 .....	0.889442
March 22, 2009 .....	0.889442
March 23, 2009 .....	0.885740
March 24, 2009 .....	0.886132
March 25, 2009 .....	0.889759
March 26, 2009 .....	0.887154
March 27, 2009 .....	0.874508
March 28, 2009 .....	0.874508
March 29, 2009 .....	0.874508
March 30, 2009 .....	0.867152
March 31, 2009 .....	0.877578

## United Kingdom pound sterling:

March 9, 2009 .....	1.375700
March 11, 2009 .....	1.378000

Dated: April 1, 2009

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange.*

01/01/09

LIQ-03-01-RR:OO:CI

RE: SECTION 159.34 CFR

SUBJECT: CERTIFIED RATES OF FOREIGN EXCHANGE:  
FIRST QUARTER, 2009

LISTED BELOW ARE THE BUYING RATES CERTIFIED FOR THE QUARTER TO THE SECRETARY OF THE TREASURY BY THE FEDERAL RESERVE BANK OF NEW YORK UNDER PROVISION OF 31 USC 5151. THESE QUARTERLY RATES ARE APPLICABLE THROUGHOUT THE QUARTER EXCEPT WHEN THE CERTIFIED DAILY RATES VARY BY 5% OR MORE. SUCH VARIANCES MAY BE OBTAINED BY CALLING (646) 733-3065 OR (646) 733-3057.

QUARTER BEGINNING JANUARY 1, 2009 AND ENDING  
MARCH 31, 2009

COUNTRY	CURRENCY	U.S. DOLLARS
AUSTRALIA .....	DOLLAR .....	\$0.708300
BRAZIL .....	REAL .....	\$0.430478
CANADA .....	DOLLAR .....	\$0.826378
CHINA, P.R. ....	YUAN .....	\$0.146574
DENMARK .....	KRONE .....	\$0.187266
HONG KONG .....	DOLLAR .....	\$0.129026
INDIA .....	RUPEE .....	\$0.020725
JAPAN .....	YEN .....	\$0.010975
MALAYSIA .....	RINGGIT .....	\$0.288600
MEXICO .....	PESO .....	\$0.072558
NEW ZEALAND .....	DOLLAR .....	\$0.585000
NORWAY .....	KRONE .....	\$0.145406
SINGAPORE .....	DOLLAR .....	\$0.689037
SOUTH AFRICA .....	RAND .....	\$0.107411
SRI LANKA .....	RUPEE .....	\$0.008776
SWEDEN .....	KRONA .....	\$0.128475
SWITZERLAND .....	FRANC .....	\$0.935891
THAILAND .....	BAHT .....	\$0.028752
UNITED KINGDOM .....	POUND STERLING .....	\$1.452000
VENEZUELA .....	BOLIVAR .....	\$0.466287

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange*

**DEPARTMENT OF HOMELAND SECURITY  
U.S. CUSTOMS AND BORDER PROTECTION**

**CBP Dec. 09-26**

**Guidelines for the Assessment and Cancellation of Claims  
for Liquidated Damages for Failure to Comply with the  
Vessel Stow Plan, Container Status Message, and Importer  
Security Filing Requirements**

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

**ACTION:** General notice.

**SUMMARY:** Pursuant to Section 203 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 120 Stat. 1884 (SAFE Port Act)) and section 343(a) of the Trade Act of 2002, as amended (set forth at 19 U.S.C. 2071 note), U.S. Customs and Border Protection (CBP) published in the Federal Register (73 FR 71730), an Interim Final Rule (CBP Dec. 08-46) on November 25, 2008, requiring that CBP receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo destined to the United States by vessel. Pursuant to CBP Dec. 08-46, carriers are generally required to submit two data elements – a vessel stow plan and container status messages relating to containers loaded on vessels destined to the United States – in addition to the elements they are already required to electronically transmit in advance; and Importer Security Filing (ISF) Importers, as defined in the regulations, are generally required to submit an ISF containing 10 data elements relating to cargo destined to arrive within the limits of a port in the United States by vessel. Under the authority of 19 U.S.C. 1623, this document publishes guidelines for the assessment and cancellation of claims for liquidated damages incurred by carriers and ISF Importers for failure to provide the required advance electronic information to CBP within the time period and manner prescribed by the regulations or for providing inaccurate or invalid information.

**EFFECTIVE DATE:** These guidelines will take effect July 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Chris Pappas, Penalties Branch, Regulations and Rulings, Office of International Trade, (202) 325-0109.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Pursuant to Section 203 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 120 Stat. 1884 (SAFE Port

Act)) and section 343(a) of the Trade Act of 2002, as amended (set forth at 19 U.S.C. 2071 note), U.S. Customs and Border Protection (CBP) published in the Federal Register (73 FR 71730), an Interim Final Rule (CBP Dec. 08-46) on November 25, 2008, requiring that CBP receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo destined to the United States by vessel. Pursuant to CBP Dec. 08-46, carriers are generally required to submit two data elements – a vessel stow plan and container status messages relating to containers loaded on vessels destined to the United States – in addition to the elements they are already required to electronically transmit in advance; and Importer Security Filing (ISF) Importers, as defined in the regulations, are generally required to submit an ISF containing 10 data elements relating to cargo destined to arrive within the limits of a port in the United States by vessel.

Under the authority of 19 U.S.C. 623, this document publishes guidelines for the assessment and cancellation of claims for liquidated damages incurred by carriers and ISF Importers for failure to provide the required advance electronic information to CBP within the time period and manner prescribed by the regulations or for providing inaccurate or invalid information. The text of the guidelines is set forth below.

Date: June 24, 2009

JAYSON P. AHERN,  
*Acting Commissioner,  
Customs and Border Protection.*

**Guidelines for the Assessment and Cancellation of Claims for Liquidated Damages for Failure to Comply with the Vessel Stow Plan Requirements (19 CFR 4.7c) and Container Status Message Requirements (19 CFR 4.7d); Guidelines for the Assessment and Cancellation of Claims for Liquidate Damages for Failure to Comply with the Importer Security Filing Requirements (19 CFR 149.2)**

**I. In General**

In addition to liquidated damages that may be assessed as provided for below, the failure of an arriving carrier or Importer Security Filing (ISF) Importer to provide the required advance electronic cargo information in the time period and manner prescribed by the regulations in Title 19, CFR, may result in the issuance of a do not load (DNL) hold, the delay or denial of a vessel carrier's preliminary entry-permit/special license to unlade and/or the assessment of any other applicable statutory penalty. CBP may also withhold the release or transfer of the cargo until CBP receives the required infor-

mation and has had the opportunity to review the documentation and conduct any necessary examination.

Where the ISF Importer receives any of the ISF information from another party and where the carrier receives any of the vessel stow plan and container status message information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present such information on the basis of what the party reasonably believes to be true.

## **II. Failure to File Complete, Accurate, and Timely Vessel Stow Plan (19 CFR 4.7c)**

### **A. Requirements**

- A vessel stow plan is required for all vessels subject to 19 CFR 4.7(a), except for any vessel exclusively carrying break bulk cargo or bulk cargo.
- The incoming carrier (i.e., vessel operator) is required to submit the vessel stow plan.
- The vessel stow plan must be submitted so that CBP receives it no later than 48 hours after the vessel departs from the last foreign port. For voyages less than 48 hours in duration, CBP must receive the stow plan prior to arrival at the first U.S. port.
- Inasmuch as CBP requires that an accurate and complete stow plan be submitted, a carrier must submit a new accurate vessel stow plan immediately upon discovery of any inaccuracies.

### **B. Violations**

- It is a violation to fail to submit a vessel stow plan when one is required, to submit a late vessel stow plan, or to submit an inaccurate vessel stow plan.

### **C. Assessment of Liquidated Damages Claims for Vessel Stow Plan Violations**

- When a carrier arrives at a port of entry where a vessel stow plan is required, Port Directors may assess a claim for liquidated damages against the carrier in the amount of \$50,000 per vessel stow plan under 19 CFR 113.64(f), for violation of 19 CFR 4.7c when a complete, accurate, and timely vessel stow plan was not submitted.
- A claim for liquidated damages in the amount of \$50,000 may be assessed for each vessel arrival.

- D. **Additional Statutory Penalties.** A penalty may be assessed under the provisions of 19 U.S.C. 1436 with CBP Headquarters approval for serious or repetitive violations. Such penalties will be mitigated in a manner consistent with current guidelines for section 1436 penalties. *See* the applicable guidelines, published in the CBP Bulletin and Decisions (CBP Dec. 05-23) on July 6, 2005.
- E. **Cancellation of Liquidated Damages Claims for Vessel Stow Plan Violations**
1. **Failure to File**
    - a. **First violation.** For the first violation, if an arriving carrier incurs a liquidated damages claim for failure to file a vessel stow plan, the liquidated damages claim may be cancelled upon payment of an amount between \$5,000 and \$25,000, depending on the presence of mitigating or aggravating factors, if CBP determines that law enforcement goals were not compromised by the violation.
    - b. **Subsequent violations.** If an arriving carrier incurs a subsequent liquidated damages claim for failure to file a vessel stow plan, the liquidated damages claim may be cancelled upon payment of an amount not less than \$25,000 if CBP determines that law enforcement goals were not compromised by the violation.
    - c. **No relief will be granted if CBP determines that law enforcement goals were compromised by the violation.**
  2. **Late and Inaccurate Filings**
    - a. **First violation.** For the first violation, if an arriving carrier incurs a liquidated damages claim for filing a late or inaccurate vessel stow plan, the liquidated damages claim may be cancelled upon payment of an amount between \$2,500 and \$10,000, depending on the presence of mitigating or aggravating factors, if CBP determines that law enforcement goals were not compromised by the violation.
    - b. **Subsequent Violations.** If the arriving carrier incurs a subsequent liquidated damages claim for filing a late or inaccurate vessel stow plan, the liquidated damages claim may be cancelled upon payment of an amount not less than \$5,000 if CBP determines that law enforcement goals were not compromised by the violation.
    - c. **No relief will be granted if CBP determines that law enforcement goals were compromised by the violation.**
- F. **Mitigating and Aggravating Factors**

CBP will consider all available information in a petition, taking into account any mitigating, aggravating, and extraordinary



factors, in determining the final assessed claim for liquidated damages or penalties.

1. Mitigating Factors (these are not exhaustive):
  - a. Evidence of progress in the implementation of the vessel stow plan requirement during the flexible enforcement period (i.e., January 26, 2009 through January 26, 2010).
  - b. Vessel stow plan information was filed late because of vessel diversion due to factors outside of the carrier's control (e.g., due to weather).
  - c. A carrier which has been validated and is in good standing with the (Customs-Trade Partnership Against Terrorism) C-TPAT program may receive additional mitigation of up to 50% of the normal mitigation amount.
  - d. Demonstrated remedial action has been taken to prevent future violations.
  - e. Regarding an inaccurate vessel stow plan, the presenting party acquired the information from another party in accordance with ordinary commercial practices, and can demonstrate that it reasonably believed the information to be true, and it was not reasonably able to verify the information. This is an extraordinary mitigating factor that may warrant cancellation of a claim without payment.
2. Aggravating Factors (these are not exhaustive):
  - a. Lack of cooperation with CBP or CBP activity is impeded with regard to the case.
  - b. Evidence of smuggling or attempt to introduce or introduction of merchandise contrary to law. This may be considered an extraordinary aggravating factor.
  - c. Multiple errors on the vessel stow plan.
  - d. There is a rising error rate which is indicative of deteriorating performance in the transmission of vessel stow plan information.

### **III. Failure to File Complete, Accurate, and Timely Container Status Messages (19 CFR 4.7d)**

#### **A. Requirements**

- A container status message (CSM) is required if the carrier creates or collects a CSM, relating to a container which is destined to arrive within the limits of a port in the United States from a foreign port by vessel, in its equipment tracking system reporting that event:
  - (1) When the booking relating to a container is confirmed.
  - (2) When a container undergoes a terminal gate inspection.
  - (3) When a container arrives or departs a facility (These events take place when a container enters or exits a port, container yard, or other facility. Generally, these CSMs

are referred to as “gate-in” and “gate-out” messages.).

- (4) When a container is loaded on or unloaded from a conveyance (This includes vessel, feeder vessel, barge, rail and truck movements. Generally, these CSMs are referred to as “loaded on” and “unloaded from” messages).
  - (5) When a vessel transporting a container departs from or arrives at a port (These events are commonly referred to as “vessel departure” and “vessel arrival” notices).
  - (6) When a container undergoes an intra terminal movement.
  - (7) When a container is ordered stuffed or stripped.
  - (8) When a container is confirmed stuffed or stripped.
  - (9) When a container is shopped for heavy repair.
- The incoming vessel operating carrier is required to submit CSMs.
    - Carriers must submit container status messages no later than 24 hours after the CSM is entered into the carrier’s equipment tracking system.
    - If a carrier does not create or collect CSMs in an equipment tracking system, the carrier is not required to submit CSMs to CBP.

#### B. Violations

- Where a CSM is required, it is a violation to fail to submit a CSM, to submit a late CSM, or to submit an inaccurate CSM.

#### C. Assessment of Liquidated Damages Claims for CSM Violations

- Failure to file. If a carrier fails to submit a CSM where one is required to be submitted, Port Directors may assess a claim for liquidated damages against the carrier in the amount of \$5,000 per container status message under 19 CFR 113.64(g) for violation of 19 CFR 4.7d.
- Late filing. If a carrier submits a late CSM where one is required to be submitted, Port Directors may assess a claim for liquidated damages against the carrier in the amount of \$5,000 per container status message under 19 CFR 113.64(g) for violation of 19 CFR 4.7d.
- Inaccurate filing. If a carrier submits an inaccurate CSM, Port Directors may assess a claim for liquidated damages against the carrier in the amount of \$5,000 per container status message under 19 CFR 113.64(g) for violation of 19 CFR 4.7d.
- Claims for liquidated damages for failure to file a CSM, late CSMs, and inaccurate CSMs may be assessed up to a maximum of \$100,000 per vessel arrival.

#### D. Additional Statutory Penalties. A penalty may be assessed under the provisions of 19 U.S.C. 1436, or any other applicable

statutory penalty authority, with CBP Headquarters approval for serious or repetitive violations. Section 1436 penalties will be mitigated in a manner consistent with current guidelines for section 1436 penalties. *See* the applicable guidelines, published in the CBP Bulletin and Decisions (CBP Dec. 05–23) on July 6, 2005.

E. Cancellation of Liquidated Damages Claims for CSM Violations

1. Failure to File

- a. First violation. For the first violation, if a carrier incurs a liquidated damages claim for failure to file a CSM, the liquidated damages claim may be cancelled upon payment of an amount between \$1,000 and \$2,000 per CSM not filed, depending on the presence of mitigating or aggravating factors, if CBP determines that law enforcement goals were not compromised by the violation.
- b. Subsequent violations. If a carrier incurs a subsequent liquidated damages claim for failure to file a CSM, the liquidated damages claim may be cancelled upon payment of an amount not less than \$2,500 per CSM not filed if CBP determines that law enforcement goals were not compromised by the violation.
- c. No relief will be granted if CBP determines that law enforcement goals were compromised by the violation.

2. Late and Inaccurate Filings

- a. First violation. For the first violation, if a carrier incurs a liquidated damages claim for filing a late or inaccurate CSM, the liquidated damages claim may be cancelled upon payment of an amount between \$500 and \$1,000 per late or inaccurate CSM, depending on the presence of mitigating or aggravating factors, if CBP determines that law enforcement goals were not compromised by the violation.
- b. Subsequent violations. If a carrier incurs a subsequent liquidated damages claim for filing a late or inaccurate CSM, the liquidated damages claim may be cancelled upon payment of an amount not less than \$1,500 per late or inaccurate CSM if CBP determines that law enforcement goals were not compromised by the violation.
- c. No relief will be granted if CBP determines that law enforcement goals were compromised by the violation.

F. Mitigating and Aggravating Factors

CBP will consider all available information in a petition, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed claim for liquidated damages or penalties.

1. Mitigating Factors (these are not exhaustive):
  - a. Evidence of progress in the implementation of the container status message requirement during the flexible enforcement period (i.e., January 26, 2009 through January 26, 2010).
  - b. Small number of violations compared to the number of container status messages submitted by the carrier.
  - c. A carrier which has been validated and is in good standing with the C-TPAT program may receive additional mitigation of up to 50% of the normal mitigation amount.
  - d. Demonstrated remedial action has been taken to prevent future violations.
  - e. Regarding an inaccurate container status message, the presenting party acquired the information from another party in accordance with ordinary commercial practices, and can demonstrate that it reasonably believed the information to be true, and it was not reasonably able to verify the information. This is an extraordinary mitigating factor that may warrant cancellation of a claim without payment.
2. Aggravating Factors (these are not exhaustive):
  - a. Lack of cooperation with CBP or CBP activity is impeded with regard to the case.
  - b. Evidence of smuggling or attempt to introduce or introduction of merchandise contrary to law. This may be considered an extraordinary aggravating factor.
  - c. Multiple errors on the container status message.
  - d. There is a rising error rate which is indicative of deteriorating performance in the transmission of container status message information.

#### **IV. Failure to File Complete, Accurate, and Timely Importer Security Filing (19 CFR Part 149)**

##### **A. Importer Security Filing (ISF) Requirements Generally**

- The ISF Importer, or its agent, must submit an ISF before cargo is laden at a foreign port for all non-bulk cargo destined to arrive in the United States by vessel.
- An ISF is required for each shipment, including elements at the lowest bill of lading level (i.e., at the house bill level, if applicable).
- The party who filed the ISF must update the ISF if, after the filing and before the goods arrive within the limits of a port in the United States, there are changes to the information filed or more accurate information becomes available.

## B. ISF Importer

- The party required to submit the ISF (i.e., the ISF Importer) is the party causing the goods to enter the limits of a port in the United States.
- The ISF Importer is the carrier for foreign cargo remaining on board (FROB).
- The ISF Importer is the party filing for the immediate exportation (IE), transportation and exportation (T&E), or foreign trade zone (FTZ) documentation for those types of shipments.
- The ISF Importer is the goods' owner, purchaser, consignee, or agent such as a licensed customs broker for shipments other than FROB, IE, and T&E inbond shipments, and goods to be delivered to an FTZ.
- The ISF Importer, as a business decision, may designate an authorized agent to file the ISF on the ISF Importer's behalf.

## C. ISF-10 for Shipments Other Than Those Consisting of FROB and IE or T&E Shipments

1. ISF-10 Elements: (1) Seller; (2) Buyer; (3) Importer of record number/Foreign trade zone applicant identification number; (4) Consignee number(s); (5) Manufacturer (or supplier); (6) Ship to party; (7) Country of origin; (8) Commodity Harmonized Tariff Schedule of the United States (HTSUS) number; (9) Container stuffing location; and (10) Consolidator (stuffer).
2. Line-Item Linking. The manufacturer (or supplier), country of origin, and commodity HTSUS number must be linked to one another at the line item level.
3. ISF-10 Timing
  - Two of the elements – the Container stuffing location and Consolidator (stuffer) – are subject to flexibility as to timing. These two elements must be submitted as early as possible and in any event no later than 24 hours prior to arrival in a U.S. port (or upon lading at the foreign port if that is later than 24 hours prior to arrival in a U.S. port).
  - The other eight elements must be submitted no later than 24 hours prior to lading.
4. Flexibilities
  - Two of the elements – the Container stuffing location and Consolidator (stuffer) – are subject to flexibility as to timing. *See* the ISF-10 Timing section above.
  - Four of the elements – Manufacturer (or supplier), Ship to party, Country of origin, and Commodity HTSUS number –

are subject to flexibility as to interpretation. While these four elements must be submitted 24 hours prior to lading, the ISF Importer, in its initial filing, may provide a range of acceptable responses based on facts available to the importer at the time, in lieu of a specific response (which may become known to the importer only at a later time). The ISF Importer must update its filings with respect to these four elements as soon as more precise or more accurate information is available, in no event later than 24 hours prior to arrival at a U.S. port (or upon lading at the foreign port if that is later than 24 hours prior to arrival in a U.S. port).

D. ISF-5 for Shipments Consisting Entirely of FROB and IE or T&E Shipments

1. ISF-5 Elements: (1) Booking party; (2) Foreign port of unloading; (3) Place of delivery; (4) Ship to party; and (5) Commodity HTSUS number.
2. ISF-5 Timing
  - The ISF for IE and T&E in-bond shipments must be submitted 24 hours prior to lading.
  - The ISF for FROB must be submitted any time prior to lading.

E. Updates. The party who filed the ISF (ISF-10 or ISF-5) must update the ISF if, after the filing and before the goods arrive within the limits of a port in the United States, there are changes to the information filed or more accurate information becomes available.<sup>1</sup>

F. Violations

- It is a violation to fail to submit an ISF when one is required, to submit a late ISF, or to submit an inaccurate ISF.
- It is a violation to submit an inaccurate update pursuant to 19 CFR 149.2(d) or to fail to withdraw an ISF pursuant to 19 CFR 149.2(e).

G. Assessment of Liquidated Damages Claims for ISF Violations

- Failure to file. Liquidated damages cannot be assessed for the failure to file an ISF if no bond is in place. *See* paragraph K for instructions for enforcement for the failure to file an ISF.

---

<sup>1</sup>See the “Flexibilities” section above for additional specific update requirements applicable to the four elements that are subject to flexibility as to interpretation.

- Late filing. If an ISF Importer submits a late ISF, Port Directors may assess a claim for liquidated damages against the party in the amount of \$5,000 per late ISF under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2.
  - Inaccurate filing. If an ISF Importer submits an inaccurate ISF, Port Directors may assess a claim for liquidated damages against the party in the amount of \$5,000 per inaccurate ISF under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2. With regard to liquidated damages claims assessed for an inaccurate ISF, CBP will consider the transmission closest in time to, but prior to, 24 hours prior to lading, prior to lading, or 24 hours prior to arrival, whichever is applicable.
  - Updates. If an ISF Importer submits an inaccurate ISF update pursuant to 19 CFR 149.2(d), Port Directors may assess a claim for liquidated damages against the party for the first inaccurate ISF update in the amount of \$5,000 under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2.
  - Withdrawals. If an ISF Importer fails to withdraw an ISF as required by 19 CFR 149.2(e), Port Directors may assess a claim for liquidated damages against the party in the amount of \$5,000 under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2.
- H. Additional Statutory Penalties. A penalty may be assessed under the provisions of 19 U.S.C. 1595a(b), or any other applicable statutory authority, with CBP Headquarters approval for serious or repetitive violations. Section 1595a(b) penalties will be mitigated in a manner consistent with current guidelines for section 1595a(b) penalties for violations of a statute other than 19 U.S.C. 1448 or 1499. *See* page 16 of the Mitigation Guidelines: Fines, Penalties, Forfeitures and Liquidated Damages Informed Compliance Publication.
- I. Cancellation of Liquidated Damages Claims for ISF Violations
1. First violation. If an ISF Importer incurs a liquidated damages claim for filing a late or inaccurate ISF or an inaccurate ISF update, the liquidated damages claim may be cancelled upon payment of an amount between \$1,000 and \$2,000, depending on the presence of mitigating or aggravating factors, if CBP determines that law enforcement goals were not compromised by the violation.
  2. Subsequent Violations. If an ISF Importer incurs a subsequent liquidated damages claim for filing a late or inaccurate ISF or an inaccurate ISF update, the liquidated damages claim may be cancelled upon payment of an amount not less

than \$2,500 if CBP determines that law enforcement goals were not compromised by the violation.

3. No relief will be granted if CBP determines that law enforcement goals were compromised by the violation.

#### J. Mitigating and Aggravating Factors

CBP will consider all available information in a petition, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed claim for liquidated damages or penalties.

##### 1. Mitigating Factors (these are not exhaustive):

- a. Evidence of progress in the implementation of the ISF requirement during the flexible enforcement period (i.e., January 26, 2009 through January 26, 2010).
- b. Small number of violations compared to the number of shipments for which ISFs were required.
- c. An ISF Importer which is a certified Tier 2 or Tier 3 C-TPAT member may receive additional mitigation of up to 50% of the normal mitigation amount, depending upon tier of C-TPAT participation.
- d. Demonstrated remedial action has been taken to prevent future violations.
- e. ISF information was filed late because of vessel diversion due to factors outside of the ISF Importer's control (e.g., due to weather).
- f. Regarding an inaccurate filing, the presenting party acquired the information from another party in accordance with ordinary commercial practices, and can demonstrate that it reasonably believed the information to be true, and it was not reasonably able to verify the information. This is an extraordinary mitigating factor that may warrant cancellation of a claim without payment.

##### 2. Aggravating factors:

- a. Lack of cooperation with CBP or CBP activity is impeded with regard to the case.
- b. Evidence of smuggling or attempt to introduce or introduction of merchandise contrary to law. This may be considered an extraordinary aggravating factor.
- c. Multiple errors on the ISF.
- d. There is a rising error rate which is indicative of deteriorating performance in the transmission of ISF information.

#### K. Failure to File

1. If goods for which an ISF has not been filed arrive in the United States, CBP shall withhold the release or transfer of the cargo until CBP receives the required ISF information



and has had the opportunity to review the documentation and conduct any necessary examination.

2. CBP also reserves the right to limit the permit to unlade so as to not permit unloading of merchandise for which no ISF has been filed, and, if such cargo is unladen without permission, it may be subject to seizure. All seizures will be approved by CBP Headquarters.

---

## *General Notices*

### **AGENCY INFORMATION COLLECTION ACTIVITIES: Certificate of Registration**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0010

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Certificate of Registration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 16226) on April 9, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before [Insert date 30 days from the date this notice is published in the July 17, 2009.

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

**SUPPLEMENTARY INFORMATION:**

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

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

**Title:** Certificate of Registration

**OMB Number:** 1651–0010

**Form Number:** Forms 4455 and 4457

**Abstract:** The Certificate of Registration is used to expedite free entry or entry at a reduced rate on foreign made personal articles that are taken abroad. The articles are dutiable each time they are brought into the United States unless there is acceptable proof of prior possession. It is also used for the registration, examination, and supervised lading of commercial shipments of articles exported for repair, alteration, processing, etc., which will subsequently be returned to the United States either free of duty or at a reduced rate.

**Current Actions:** There are no changes to the information collection. This submission is being made to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Individuals, Travelers

**Estimated Number of Respondents:** 200,000

**Estimated Number of Total Annual Responses:** 200,000

**Estimated Time Per Response:** 3 minutes

**Estimated Total Annual Burden Hours:** 10,000

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: June 11, 2009

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

[Published in the Federal Register, June 17, 2009 (74 FR 28711)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**  
**Foreign Assembler's Declaration**  
**(with Endorsement by Importer)**

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

**ACTION:** 60-Day notice and request for comments; Extension of an existing information collection: 1651-0031

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Assembler's Declaration (with Endorsement by Importer). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before (INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER), to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

**Title:** Foreign Assembler's Declaration (with Endorsement by Importer)

**OMB Number:** 1651-0031

**Form Number:** None

**Abstract:** The Foreign Assembler's Declaration with Importer's Endorsement is used by CBP to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States.

**Current Actions:** There are no changes to the information collection. This submission is being made to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Businesses

**Estimated Number of Respondents:** 2,730

**Estimated Annual Time Per Respondent:** 110.77 hours

**Estimated Total Annual Burden Hours:** 302,402

Dated: June 11, 2009

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

**AGENCY INFORMATION COLLECTION ACTIVITIES:  
Crew Member's Declaration**

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

**ACTION:** 60-Day notice and request for comments; Extension of an existing information collection: 1651-0021

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew Member's Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before (INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER), to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

**Title:** Crew Member's Declaration

**OMB Number:** 1651–0021

**Form Number:** Form 5129

**Abstract:** The Form 5129 is used to accept and record importations of merchandise by crewmembers, and to enforce agricultural quarantines, currency reporting laws, and revenue collection laws. CBP is proposing to increase the burden hours for this collection of information as a result of increasing the estimated time to fill out Form 5129 from 3 minutes to 10 minutes.

**Current Actions:** This submission is being made to extend the expiration date with a change to the burden hours.

**Type of Review:** Extension (with change)

**Affected Public:** Businesses

**Estimated Number of Respondents:** 6,000,000

**Estimated Time Per Respondent:** 10 minutes

**Estimated Total Annual Burden Hours:** 996,000

Dated: June 18, 2009

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

[Published in the Federal Register, June 24 2009 (74 FR 30103)]

### **APPROVAL OF SAYBOLT LP, AS A COMMERCIAL GAUGER**

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

**ACTION:** Notice of approval of Saybolt LP, as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Saybolt LP, 905C Eastern Blvd., Clarksville, IN 47129, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website

listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The approval of Saybolt LP, as commercial gauger became effective on September 10, 2008. The next triennial inspection date will be scheduled for September 2011.

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

Dated: June 18, 2009

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

[Published in the Federal Register, June 24, 2009 (74 FR 30105)]

---

### **ACCREDITATION AND APPROVAL OF SGS NORTH AMERICA, INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 1448 Texas Ave., Texas City, TX 77590, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on February 12, 2009. The next triennial inspection date will be scheduled for February 2012.

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

Dated: June 18, 2009

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

[Published in the Federal Register, June 24, 2009 (74 FR 30100)]

#### **APPROVAL OF SAYBOLT LP, AS A COMMERCIAL GAUGER**

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

**ACTION:** Notice of approval of Saybolt LP, as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Saybolt LP, 139 Castle Coakley Bay #4, St. Croix, VI 5620, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The approval of Saybolt LP, as commercial gauger became effective on April 21, 2009. The next triennial inspection date will be scheduled for April 2012.



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

Dated: June 18, 2009

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

[Published in the Federal Register, June 24, 2009 (74 FR 30106)]

**ACCREDITATION AND APPROVAL OF SGS NORTH  
AMERICA, INC., AS A COMMERCIAL GAUGER AND  
LABORATORY**

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

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 4701 East Napoleon (Hwy 90), Sulfur, LA 70663, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on April 08, 2009. The next triennial inspection date will be scheduled for April 2012.

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

Dated: June 18, 2009

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

[Published in the Federal Register, June 24, 2009 (74 FR 30100)]

—◆—

**ACCREDITATION AND APPROVAL OF SAYBOLT LP, AS A  
COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, P.O. Box 7416, Garden City, GA 31408, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on March 26, 2009. The next triennial inspection date will be scheduled for March 2012.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border

Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2009

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

[Published in the Federal Register, June 24, 2009 (74 FR 30101)]

**ACCREDITATION AND APPROVAL OF INSPECTORATE  
AMERICA CORPORATION, AS A COMMERCIAL GAUGER  
AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 141 N. Pasadena Blvd., Pasadena, TX 77506, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on February 25, 2009. The next triennial inspection date will be scheduled for February 2012.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border

Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2009

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

[Published in the Federal Register, June 24, 2009 (74 FR 30101)]

### **ACCREDITATION AND APPROVAL OF SAYBOLT LP, AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 3113 Red Bluff Road, Pasadena, TX 77503, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on February 04, 2009. The next triennial inspection date will be scheduled for February 2012.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border

Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2009

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

[Published in the Federal Register, June 24, 2009 (74 FR 30101)]

**ACCREDITATION AND APPROVAL OF NMC GLOBAL  
CORPORATION, AS A COMMERCIAL GAUGER AND  
LABORATORY**

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

**ACTION:** Notice of accreditation and approval of NMC Global Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, NMC Global Corporation, 1100 Walnut St., Roselle, NJ 07203, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of NMC Global Corporation, as commercial gauger and laboratory became effective on April 01, 2009. The next triennial inspection date will be scheduled for April 2012.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border

Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2009

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

[Published in the Federal Register, June 24, 2009 (74 FR 30102)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, June 24, 2007*

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

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

**PROPOSED MODIFICATION AND REVOCATION OF  
RULING LETTERS RELATING TO THE CUSTOMS  
POSITION ON THE APPLICATION OF THE JONES ACT TO  
THE TRANSPORTATION OF CERTAIN MERCHANDISE  
AND EQUIPMENT BETWEEN COASTWISE POINTS**

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

ACTION: Notice of proposed modification and revocation of headquarters’ ruling letters relating to U.S. Customs and Border Protection’s (“CBP”) position regarding the application of the coastwise laws to certain merchandise and vessel equipment that are transported between coastwise points.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify its position regarding which merchandise may be transported between coastwise points

without violating 46 U.S.C. § 55102, (i.e. the Jones Act), and accordingly, proposing to strictly interpret T.D. 78–387 (Oct. 7, 1976). In addition, CBP intends to modify its position regarding how it determines what constitutes “vessel equipment” as defined in T.D. 49815(4) and the application of T.D. 49815(4) in cases involving the transportation of merchandise under 46 U.S.C. § 55102. CBP is proposing to interpret T.D. 49815(4) to limit the definition of equipment, as it relates to the transportation of merchandise under 46 U.S.C. § 55102, to articles necessary and appropriate for the navigation, operation, or maintenance of the vessel *itself* and the safety and comfort of the persons on board, as opposed to being necessary and appropriate for a vessel to engage in a particular activity. CBP intends to revoke or modify all prior rulings inconsistent with these proposed interpretations. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 16, 2009.

ADDRESS: 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, 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 of the Trade and Commercial Regulations Branch at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Lisa L. Burley, Cargo Security, Carriers, and Immigration Branch, at (202) 325–0215.

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 proposes to modify its position regarding which merchandise may be transported between coastwise points without violating 46 U.S.C. § 55102 and its position regarding how it determines what constitutes “vessel equipment” under T.D. 49815(4) (Mar. 13, 1939) and the application of T.D. 49815(4) in cases involving the transportation of merchandise under 46 U.S.C. § 55102. Although in this notice CBP specifically refers to the revocation and modification of the Headquarters Ruling Letters (“HQ”) listed below, this notice covers any rulings raising these issues which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those 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) 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 proposes to modify or revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially similar transactions should advise CBP during this notice period. A party’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 party or its agents for coastwise transportation of merchandise subsequent to the effective date of the final decision on this notice.

### **Transportation of Merchandise**

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, *i.e.* a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; *see also* 19 U.S.C.



§ 1401(c)(stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .” The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009).<sup>1</sup>

In T.D. 78–387 (Oct. 7, 1976), the proposed use of a foreign-built vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, inter alia, specifically: pipelaying; repairing pipe and underwater portions of a drilling platform; installation and transportation of anodes; transportation of pipeline burial tools; transportation of pipeline repair materials; installation and transportation of pipeline connectors and wellheads; installation and transportation of wellhead equipment, valves, and valve guards; and the transportation of machinery and production equipment.

CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying operation which makes the operation permissible.” See T.D. 78–387, subparagraph (1). CBP noted, however, that the transportation of pipe by any vessel other than a pipelaying vessel between two coastwise points would have to be accomplished by a coastwise-qualified vessel. *Id.*

In addition, CBP held that repairing pipe is also not a use in the coastwise trade and therefore, the transportation of pipe and repair materials was not an activity that would be prohibited by the coastwise laws. See T.D. 78–387, subparagraph (2). With regard to the repair of offshore or subsea structures, CBP also held the use of such vessel was not a use in the coastwise trade; therefore, the transportation by that vessel of such “materials and tools as are *necessary for the accomplishment of the mission of the vessel* (i.e., materials to be expended during the course of the underwater inspection and repair operations and tools necessary in such operations)” was permitted provided that the installation of the repair materials onto the underwater portions of the structure is a) unforeseen b) the repair material or component to be installed is of de minimis value,

---

<sup>1</sup>The laws of the United States, including the coastwise laws, are extended, under Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA), to “. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any installation or other device (other than a ship or a vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.”

and c) such materials are “usually carried aboard the vessel as supplies.” See *id.* at subparagraph (6) (emphasis added). If the installation of the repair materials is foreseen and more than de minimis value (e.g. a structural member), the transportation of such materials must be made by a coastwise-qualified vessel. *Id.* The ruling distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would have to be accomplished by a coastwise-qualified vessel. *Id.* CBP emphasized that the foregoing repair work had to be done “on or from” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.*; see also subparagraph (4) (holding that the “transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipelaying operations is not an activity prohibited by the coastwise laws since the tools are considered to be part of the legitimate equipment of that vessel).

CBP held that the vessel’s installation of the pipeline connectors to the offshore drilling platform and subsea wellheads was not coastwise trade. See T.D. 78–387, subparagraph (4). In addition, the transportation of the pipeline connectors would not be in violation of the coastwise laws if the pipeline connectors were installed by the crew of the work barge *incidental to the pipelaying operations of that vessel*. *Id.* (emphasis added).

CBP held that the installation of the wellhead assembly to a location within U.S. waters or the servicing of the wellheads would not be a use in the coastwise trade; however, the transportation of the wellhead assembly to the same location would be deemed an engagement in coastwise trade and would, therefore, have to be accomplished by a coastwise-qualified vessel. See T.D. 78–387, subparagraph (10). Further, CBP held that transportation of machinery or production equipment to an offshore production platform would be deemed a use in the coastwise trade and would therefore have to be accomplished by a coastwise-qualified vessel. See *id.* at subparagraph (8).

In prior rulings, CBP’s application of T.D. 78–387 allowed the transportation of what is characterized as “pipeline connectors” by a foreign-flagged vessel engaged in connecting the foregoing merchandise to previously laid or installed pipelines, flowlines, or wellheads on the Outer Continental Shelf (OCS). In interpreting T.D. 78–387, CBP held that such transportation was permissible if the work was done on or from the vessel transporting the article to be installed. See HQ 115185 (Nov. 20, 2000); and HQ 115218 (Nov. 30, 2000); and HQ 115311 (May 10, 2001). This limited interpretation does not include the operative language in Subparagraph (4) of T.D. 78–387,

which holds that transportation and installation of pipeline connectors is not coastwise trade *if it is incidental to the pipe-laying operation of that vessel*. CBP recognizes that allowing foreign-flagged vessels to transport merchandise from one U.S. point and install that merchandise at another point on the OCS on the condition that it merely be accomplished “on or from that vessel” would be contrary to the legislative intent of 46 U.S.C. § 55102.

Insofar as the installation and transportation of the pipeline connectors contemplated in HQ 115185 and HQ 115218 were not incidental to the pipe-laying activities of that vessel, the transportation of the pipeline connectors would be in violation of 46 U.S.C. § 55102. The contemplated transportation and installation of a pipeline connector in HQ 115311 was incidental to the pipe-laying activities of the subject foreign-flag vessel; however, the ruling does cite or address the holding in Subparagraph (4) of T.D. 78–387. Accordingly, CBP intends to modify HQ 115185 as it relates to the first and second factual scenarios raised, with proposed HQ H061697 (Attachment A); revoke HQ 115218 with proposed HQ H061698 (Attachment B); and modify HQ 115311 as it relates to the first issue in that case, with proposed HQ H061700 (Attachment C), to apply the holding in Subparagraph (4) of T.D. 78–387.

In addition, CBP intends to modify other rulings that based on the facts provided appear to be consistent with T.D. 78–387, but, do not address or apply the correct holding in T.D. 78–387. The rulings we have identified are:

HQ 115522 (Dec. 3, 2001); and

HQ 115771 (Aug. 19, 2002)

Further, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke or modify any treatment previously accorded by CBP to substantially identical transactions by this notice.

### **Vessel Equipment**

The definition of vessel equipment CBP has used in its coastwise trade rulings, has been based, in part, on T.D. 49815(4) (Mar. 13, 1939) which interprets § 309 of the Tariff Act of 1930, codified at 19 U.S.C. § 1309, that provides for the duty free withdrawal of supplies and equipment for certain domestic vessels and aircraft.

The term “equipment”, as used in section 309, as amended, includes portable articles *necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board*. It does not comprehend consumable supplies either for the vessel and its appurtenances or for the passengers and the crew. The following articles, for example, have been held to constitute equipment:

rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts.

T.D. 49815(4) (Mar. 13, 1939) (emphasis added). CBP has been applying the aforementioned definition of equipment to rulings involving the transportation of merchandise under 46 U.S.C. § 55102. In addition to citing the italicized language above in its rulings, CBP required that the use of the item in question be “in furtherance of the primary mission of the vessel” see HQ 110402 (Aug. 18, 1989), HQ 114305 (Mar. 31, 1998), and HQ 115333 (Apr. 27, 2001); “in furtherance of the operation of the vessel” see HQ 111892 (Sept. 16, 1991); “essential to the mission of the vessel” see HQ 113841 (Feb. 28, 1997); “necessary for the accomplishment of the mission of the vessel” HQ 114435 (Aug. 6, 1998); “in furtherance of the mission of the vessel” HQ 115381 (June 15, 2001); “necessary to the accomplishment of the mission of the vessel” HQ 115487 (Nov. 20, 2001); “fundamental to the vessel’s operation” HQ 115938 (Apr. 1, 2003); “used by a vessel in the course of its business” HQ 116078 (Feb. 11, 2004); and “necessary to carry out a vessel’s functions” HQ H029417 (June 5, 2008) and H032757 (July 28, 2008).

The foregoing phrases appear to paraphrase or state parts of the holding in T.D. 78–387, Subparagraph (6), as well as the language in T.D. 49815(4). As stated above, subparagraph (6) of T.D. 78–387, provides, in part:

The Customs Service is of the opinion that the sole use of a vessel in effecting underwater repairs to offshore or subsea structures is not considered a use in coastwise trade. Further, the transportation by the vessel of such materials and tools as are *necessary for the accomplishment of the mission of the vessel* (i.e., materials to be expended during the course of the underwater inspection and repair operations and tools necessary in such operations) for use by the crew of the vessel is not, generally speaking, an activity prohibited by the coastwise laws since such transportation is incidental to the vessel’s operations.

However, while materials and tools, as described above, which are *necessary for the accomplishment [sic] of the mission of the vessel* are not considered merchandise within the meaning of section 883, any article which is to be installed and therefore, in effect, landed at an offshore drilling platform is normally considered merchandise.

(emphasis added).

In applying T.D. 49815(4) to 46 U.S.C. § 55102 rulings, CBP reasoned that if the article was used in the activity in which the vessel was about to engage, e.g. “in furtherance of the mission”, “fundamental to the operation of the vessel”, etc., the article would be consid-

ered vessel equipment without regard to whether the article was necessary to the navigation, operation, and maintenance or comfort and safety of the individuals aboard the vessel *itself*. As such, it appears that although T.D. 49815(4) was cited, it was a very minute part of T.D. 78-387, paraphrased and used out of context which was applied as the rule of law in these cases.

Several of the cases that cited T.D. 49815(4), involved OCS activity including drilling, well stimulation, cable-laying, pipe-laying, and maintenance and construction. Many of the rulings, listed below, that have used the paraphrased language of T.D. 49815(4) and T.D. 78-387, as described above, to hold that pipe and cable, e.g. items that are paid out and not unladen, are vessel equipment. The paying out of pipe, cable, flowlines, and umbilicals is permissible because there is no landing of merchandise and therefore, no engagement in coastwise trade. See T.D. 78-387, subparagraph (1). In addition, two rulings, HQ 111889 (Feb. 11, 1992) and HQ 115938 (Apr. 1, 2003) imply that certain articles to be installed, e.g. multi-well templates, marine risers, oilfield equipment, and structural components, are vessel equipment which is contrary to T.D. 78-387, subparagraphs (4), (6), (8), and (10), supra.

CBP recognizes that allowing a foreign-flagged vessel to transport articles that are not needed to navigate, operate, or maintain that vessel or for the safety and comfort of the persons on board that vessel, but rather to accomplish a activity for which that vessel would be engaged, would be contrary to the legislative intent of 46 U.S.C. § 55102.

Accordingly, CBP intends to modify HQ 111889 (Feb. 11, 1992) with HQ H061934 (Attachment D); HQ 113841 (Feb. 28, 1997) with HQ H061935 (Attachment E); HQ 115938 (Apr. 1, 2003) with HQ H061992 (Attachment F); HQ H029417 (June 5, 2008) with H061933 (Attachment G); and HQ H032757 (July 28, 2008) with H061944 (Attachment H).

In addition, CBP has identified the following rulings which would be modified with respect to their findings that certain merchandise is vessel equipment or that otherwise applies the paraphrased version of T.D. 49815(4), as described above, if this proposal is adopted:

HQ 110402 (Aug. 18, 1989);  
HQ 111892 (Sept. 16, 1991);  
HQ 112218 (July 22, 1992);  
HQ 113838 (Feb. 25, 1997);  
HQ 114305 (Mar. 31, 1998);  
HQ 114435 (Aug. 6, 1998);  
HQ 115333 (Apr. 27, 2001);  
HQ 115381 (June 15, 2001);

HQ 115487 (Nov. 20, 2001); and  
HQ 116078 (Feb. 11, 2004).

CBP recognizes that the list of rulings and decisions in this notice may not be complete and that there may exist other rulings which have not been identified which are inconsistent with this notice. Accordingly, this notice is intended to cover any ruling which pertains to whether certain merchandise transported on vessels is considered vessel equipment or merchandise pursuant to T.D. 49815(4) and T.D. 78-387. CBP also intends to revoke and/or modify all other previously issued ruling letters with findings that are inconsistent with this notice. In addition, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke or modify any treatment previously accorded by CBP to substantially identical transactions by this notice. Before modifying or revoking the above-cited rulings or other similar rulings pertaining to what is considered vessel equipment or merchandise under T.D. 49815(4) and T.D. 78-387, consideration will be given to any written comments timely received.

DATED: June 22, 2009

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Facilitation Division.*

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ 115185  
November 20, 2000  
VES-3-15-RR:IT:EC 115185 GEV  
CATEGORY: Carriers

KARLA R. HOLOMON, ESQ.  
EXXONMOBIL DEVELOPMENT COMPANY  
12450 Greenspoint Drive  
Houston, Texas 77210-4876

RE: Coastwise Trade; Outer Continental Shelf Lands Act; 43 U.S.C. § 1333(a); 46 U.S.C. App. § 883

DEAR MS. HOLOMON:

This is in response to your letters of October 4, 2000, and November 8, 2000, respectively, requesting a ruling as to whether the use of a foreign-flagged vessel in the proposed installation of certain equipment at locations in the Gulf of Mexico violates 46 U.S.C. App. § 883 (the "Jones Act"). Our ruling on this matter is set forth below.

FACTS:

The first scenario presented for our consideration involves the installation of jumper pipes on the Gulf of Mexico ocean floor. A jumper pipe is a piece of

pipe approximately 50–85 feet in length. The jumper pipes will be used to connect subsea wells to a subsea pipeline. This subsea production equipment, which will be in place at the site where the jumper pipe installation will occur, will not be operational at the time of installation. A subsea pipeline will carry produced fluids from the subsea wells to an existing platform. The jumper pipes, which will be fabricated in Louisiana, will be transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Louisiana port and proceed to the site where the vessel's crew will install the jumpers. The vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

The second scenario presented for our consideration involves the installation of hull mounted risers (HMR) and steel catenary riser spool pieces (SCRSP) on the side of a deep draft caisson vessel (DDCV) that is currently in operation. The HMR and SCRSP are flanged pipe spools approximately 200 feet and 40 feet in length, respectively. Their purpose is to connect pipeline terminations to interconnect piping running to topside processing equipment. The HMR and SCRSP will be bolted together and installed in existing clamps that are attached to the side of the DDCV. Produced fluids will be carried through the subsea pipeline and the HMR and SCRSP to the topside equipment for processing. The aforementioned subsea equipment (pipelines and interconnect piping) will be in place at the location where the riser installation occurs but will not be operational at the time of installation. When installed, the top 30 feet of the HMR will be above the waterline. The remaining 170 feet of the HMR and SCRSP will be installed below the waterline. The HMR and SCRSP will be fabricated in Texas and transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Texas port and proceed to the site where the vessel's crew will install the HMR and SCRSP. The vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

The final scenario presented for our consideration is as follows. Prior to the installation of the jumper pipes and HMR and SCRSP described above, a U.S.-flagged vessel will transport a manifold and pile to be installed on the ocean floor at the site by a foreign-flagged offshore construction vessel. The construction vessel will depart from Galveston, Texas, and proceed to the site where the vessel's crew will install the manifold and pile. The construction vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location. If the manifold or pile is damaged during installation, the preferred course of action will be for the construction vessel to lift the manifold and pile onto its deck and transport same back to the point of origin or to another nearby U.S. port.

#### ISSUE:

Whether the use of a foreign-flagged vessel in the scenarios described above constitutes a violation of 46 U.S.C. App. § 883.

#### LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United

States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented). Section 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to the aforementioned statute, provides, in pertinent part, as follows:

A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, . . .” (Emphasis added) The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95–372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

. . . It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95–590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the Customs and navigation laws, including the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS (Treasury Decision (T.D.) 54281(1)). We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81–214 and 83–52, and Customs Ruling Letter 107579, dated May 9, 1985)

In regard to the first two scenarios presented for our consideration, we note that both involve the transportation of pipeline connectors by a foreign-flag vessel to the installation site where the installation will be done by the vessel’s crew. Customs has held that the use of a foreign-flag vessel to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea well-



head would not violate the coastwise laws if the work was done from the vessel but would violate the coastwise laws if the vessel merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from that vessel. (see Customs ruling letter 108442, dated August 13, 1986; see also Treasury Decision (T.D.) 78-387) Accordingly, the proposed use of a foreign-flag vessel in the first two scenarios is not violative of 46 U.S.C. App. § 883.

With respect to the third scenario in question, the use of a foreign-flagged offshore construction vessel to effect the installation of a manifold and pile at the above-referenced sites subsequent to their transportation to those sites by a U.S.-flagged vessel and prior to the installation of the jumper pipes and the HMR and SCRSP would not be prohibited by 46 U.S.C. App. § 883. However, in the event of any damage incurred by the manifold and pile during installation, the transportation of the manifold and pile by a foreign-flagged vessel from that location to another coastwise point is prohibited pursuant to 46 U.S.C. App. § 883. It should also be noted that the aforementioned U.S.-flagged vessel must be coastwise-qualified.

HOLDING:

As discussed in the Law and Analysis portion of this ruling, the use of a foreign-flagged vessel for the transportation of pipeline connectors (jumper pipes and HMR and SCRSP) as describe in the first two scenarios for our consideration does not constitute a violation of 46 U.S.C. App. § 883. In the third scenario, the use of a foreign-flagged vessel to transport the damaged manifold and pile from the installation site on the OCS to another coastwise point does constitute a violation of 46 U.S.C. App. § 883.

LARRY L. BURTON,  
*Chief,*  
*Entry Procedures and Carriers Branch.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ 115218  
November 30, 2000  
VES-3-15-RR:IT:EC 115218 GEV  
CATEGORY: Carriers

KEVIN T. DOSSETT, ESQ.  
PREIS, KRAFT & ROY  
520 Post Oak Boulevard Suite 800  
Houston, Texas 77027

RE: Coastwise Trade; Outer Continental Shelf Lands Act; 43 U.S.C. § 1333(a); 46 U.S.C. App. §§ 289, 883

DEAR MR. DOSSETT:

This is in response to your letter of October 23, 2000, requesting a ruling as to whether the use of a foreign-flagged vessel in the transportation and installation of certain equipment at a location in the Gulf of Mexico violates the coastwise laws. Our ruling on this matter is set forth below.

**FACTS:**

Your client, a large subsea engineering concern, has been awarded a contract to install a pipeline tie-in spool piece between a previously-laid flowline and a subsea manifold in the United States Gulf of Mexico, outside territorial waters but within the Exclusive Economic Zone (“EEZ”) in the waters over the Outer Continental Shelf (“OCS”). The piece in question is a “U”-shaped deepwater flowline tie-in spool piece with a horizontal run of 75’ and two vertical runs of 25’. It is an essential component of the previously-laid flowline, as without it the flowline cannot be made operative.

Your client intends to use a Panamanian-flagged vessel for this installation operation. The vessel is a multi-purpose vessel, capable of subsea construction, maintenance and inspection, heavy lift, and flexible flowline, umbilical and coiled tube lay operations, among others.

The vessel in question is capable of being fitted with a modular carousel system for pipelaying operations and has been utilized as a pipelaying vessel on previous occasions; however, during the pipeline tie-in spool piece attachment operation this equipment will not be aboard. The vessel is dynamically positioned (DP) but also capable of 4- or 8-point mooring. During the operations in questions, she will be operating under dynamic positioning and will not be moored to the sea floor.

The attachment of the pipeline tie-in spool piece will entail a separate mobilization from the pipelaying phase of the project. In addition, while your client proposes to utilize the above-described non-coastwise-qualified vessel in the follow-on pipeline tie-in spool piece attachment operation, that vessel was not involved in the original pipelaying phase of the operation.

The pipeline tie-in spool piece attachment operation would entail the vessel departing a United States port and proceeding to one or more points in waters over the OCS within the United States’ EEZ, and thereafter returning to a United States port. In addition to its crew, other personnel necessary for the performance of the proposed operations, and the pipeline tie-in spool piece, the vessel will carry consumables and materials and equipment necessary for the completion of those operations.

The attachment of the pipeline tie-in spool piece to the previously-laid flowline and subsea manifold is a diverless operation. The pipeline tie-in spool piece is attached to a “spreader bar,” which is in turn attached to the vessel’s crane. The pipeline tie-in spool piece is then lowered into the sea and descends to the seabed. Guidance and orientation of the pipeline tie-in spool piece are controlled by remotely operated vehicles (ROVs), which are part of the vessel’s equipment. Once the connections of the pipeline tie-in spool piece to the flowline and the subsea manifold are secured, the ROVs release the spreader bar, which is then retrieved by the vessel’s crane. The ROVs then return to the vessel and the operations are complete.

**ISSUE:**

Whether the use of a foreign-flagged vessel in the transportation and installation operation described above constitutes a violation of 46 U.S.C. App. §§ 289 and/or 883.

**LAW AND ANALYSIS:**

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the “Jones Act”), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign

port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented). Pursuant to title 19, United States Code, § 1401(c) (19 U.S.C. § 1401(c)), the word “merchandise” is defined as “. . . goods, wares and chattels of every description, and includes merchandise the importation of which is prohibited.”). In addition, Customs has also held the equipment of a vessel to be considered as other than merchandise for purposes of that authority. To that end, vessel equipment has been defined as articles, “. . . necessary and appropriate for the navigation, operation, or maintenance of the vessel and for the comfort and safety of the persons on board.” (T.D. 49815(4), dated March 13, 1939)

Section 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to the aforementioned statute, provides, in pertinent part, as follows:

A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, . . .” (Emphasis added)

Title 46, United States Code Appendix, § 289 (46 U.S.C. App. § 289, the passenger coastwise law) as interpreted by the Customs Service, prohibits the transportation of passenger between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (i.e., any vessel that is not built in and documented under the laws of the United States, and owned by persons who are citizens of the United States). For purposes of § 289, “passenger” is defined as “. . . any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, business.” (19 CFR § 4.50(b)) Section 4.80a, Customs Regulations (19 CFR § 4.80a) is interpretive of 46 U.S.C. App. § 289.

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95–372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

. . . It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report

95–590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.] Under the foregoing provision, we have ruled that the Customs and navigation laws, including the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS (Treasury Decision (T.D.) 54281(1)). We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81–214 and 83–52, and Customs Ruling Letter 107579, dated May 9, 1985)

In regard to the scenario presented for our consideration, we note that it involves both the transportation of a pipeline tie-in spool piece by a foreign-flag vessel to the installation site on the OCS where the installation will be done by the vessel's crew, including technicians and personnel carried on board in connection with the operation. Customs has previously held that the use of a foreign-flag vessel to transport pipeline connectors and tools from a port in the United States to an OCS job site and install it thereby connecting a pipeline to a drilling platform or subsea wellhead would not violate the coastwise laws if the work was done from the vessel but would violate the coastwise laws if the vessel merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from that vessel. (see Customs ruling letter 108442, dated August 13, 1986; see also Treasury Decision (T.D.) 78–387) Customs position that no violation of the coastwise laws would occur in scenarios such as those discussed in the above-referenced rulings is predicated on the understanding that all equipment, consumables and tools/materials carried on board the vessel are not “merchandise” for purposes of 46 U.S.C. App. § 883, provided such articles are to be utilized in furtherance of the vessel's mission. (Customs ruling letter 113838, dated February 25, 1997) The same rationale renders crewmembers of such vessels, including divers and technicians, as well as any other personnel carried on board in connection with the services performed on or from such vessels, to be other than “passengers” within the meaning of 19 CFR § 4.50(b). *Id.*

Accordingly, since the use of the Panamanian-flag vessel under consideration would be in accordance with the aforementioned Customs rulings, it would not be violative of 46 U.S.C. App. §§ 289 and/or 883.

**HOLDING:**

As discussed in the Law and Analysis portion of this ruling, the use of a foreign-flagged vessel for the transportation and installation operation described above does not constitute a violation of 46 U.S.C. App. §§ 289 and/or 883.

LARRY L. BURTON,  
*Chief,*  
*Entry Procedures and Carriers Branch.*

## [ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ 115311  
May 10, 2001  
VES-3-15-RR:IT:EC 115311 GEV  
CATEGORY: Carriers

PHYLLIS PRICE  
CONTRACT ENGINEER  
COFLEXIP STENA OFFSHORE INC.  
7660 Woodway, Suite 390  
Houston, Texas 77063

RE: Coastwise Trade; Outer Continental Shelf; Flexible and Umbilical  
Pipelay; 43 U.S.C. § 1333(a); 46 U.S.C. App. § 883

DEAR MS. PRICE:

This is in response to your letter dated March 1, 2001, requesting a ruling regarding the use of a foreign-flagged installation vessel on the Outer Continental Shelf (OCS) that is scheduled to commence operations on June 1, 2001. Our ruling is set forth below.

## FACTS:

Coflexip Stena Offshore Inc. ("Coflexip") is to engage in an operation involving a foreign-flagged vessel to be used for the connection of four subsea wellheads on the OCS with a tension leg platform ("TLP") that is moored in the Typhoon Field Development, Green Canyon blocks 236 and 237, in the Gulf of Mexico. The wellheads will be linked to the TLP with flexible flowlines and risers manufactured in France and umbilical lines from the U.S. The flowlines will include three 4.5-inch inside diameter lines and one 5.3-inch inside diameter line with varying lengths of 0.9 to 2.3 miles.

The planned installation will begin following the shipment of the flexible flowlines and risers by commercial vessel from Le Trait, France, to a U.S. port, where that equipment will be temporarily offloaded onto a dock or barge for immediate loading aboard a foreign-flag installation vessel. During the course of the installation, the flexible flowlines and umbilical lines will not be unloaded like cargo but will be paid out from carousels and reels on board the installation vessel during the course of the installation operation on the OCS.

## ISSUES:

Whether the use of a foreign-flagged vessel for the installation of flexible flowlines, umbilical lines and risers on the OCS as described above constitutes a violation of 46 U.S.C. App. § 883.

Whether the temporary offloading of the flexible flowlines and risers onto a dock or barge in a U.S. port, and their immediate loading aboard an installation vessel for transportation to and installation on the OCS, renders such articles nondutiable

## LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign

port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented). Pursuant to § 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to 46 U.S.C. App. § 883, a coastwise transportation of merchandise takes place when merchandise laden at one coastwise point is unladen at another coastwise point.

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95-372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

... It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95-590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. (See Treasury Decisions (T.D.s) 54281(1)), 71-179(1)m 78-225 and Customs Service Decision (C.S.D.) 85-54) We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81-214 and 83-52, and Customs Ruling Letter 107579, dated May 9, 1985)

With respect to the issues presented for our consideration, we note at the outset that the flexible flowlines and umbilical lines will be installed in the same manner as cable or pipe laid on the ocean floor (i.e., paid out, not unladen). Customs has long-held that the laying of cable between two points embraced within the coastwise laws of the United States is not coastwise trade. (see C.S.D. 79-346) It is therefore our position that the installation of flowlines and umbilical lines as described above is not coastwise trade and the use of a foreign-flagged vessel to effect such installation is not a violation of 46 U.S.C. App. § 883.

The risers to be installed are part of the connection apparatus used to link the wellheads to the TLP. Although the risers will not be “paid out” as will the flexible flowlines and umbilical lines described above, we note that Customs has held that the use of a foreign-flag vessel to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea wellhead would not violate the coastwise laws if the work was done from the vessel, but would violate the coastwise laws if the vessel merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from that vessel. (see Customs ruling letter 108442, dated August 13, 1986; see also Treasury Decision (T.D.) 78-387) Accordingly, the proposed use of a foreign-flag vessel in installing the risers is not violative of 46 U.S.C. App. § 883 provided such installation is performed on or from that vessel.

With respect to the second issue presented for our consideration, all goods imported into the Customs territory of the United States from outside thereof are subject to duty or exempt therefrom as provided for by the Harmonized Tariff Schedule of the United States (HTSUS). General Note 1, HTSUS. The term “importation” is generally defined as “the bringing of goods within the jurisdictional limits of the United States with the intention to unlade them.” (See C.S.D. 89-39, *Hollander Co. v. United States*, 22 C.C.P.A. 645, 648 (1935) and *United States v. Field & Co.*, 14 Ct. Cust. App. 406 (1927). Merchandise arriving on a vessel is deemed imported on “the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise.” (See *United States v. Commodities Export Co.*, 733 F.Supp. 109 (1990) and 19 CFR § 101.1)

Accordingly, the subject flowlines and risers arriving from France will be deemed imported at the time when they are offloaded at a U.S. port. Pursuant to § 141.1(a), Customs Regulations (19 CFR § 141.1(a)), duties and the liability for their payment accrue upon imported merchandise on arrival of the importing vessel within a Customs port with intent then and there to unlade. Furthermore, § 141.4(a), Customs Regulations (19 CFR § 141.4(a)) provides that all merchandise imported into the United States is required to be entered, unless specifically excepted. Such exceptions, provided in § 141.4(b), Customs Regulations (19 CFR § 141.4(b)), do not include the flexible flowlines and risers under consideration. Consequently, these articles will be subject to Customs entry requirements and will be dutiable in their entirety when offloaded at a U.S. port notwithstanding their immediate reloading aboard an installation vessel and immediate transportation to and installation on the OCS.

Parenthetically, it should be noted that the procedures regarding immediate exportation (IE) set forth in § 18.25, Customs Regulations (19 CFR § 18.25) may not be implemented to obviate the aforementioned duty and entry requirements for this merchandise in view of the fact that a portion of it will either be attached to and rising along the platform to which U.S. Customs laws apply (see Customs ruling letters 110403, dated September 15, 1989, and 106454, dated November 16, 1983), while the remainder, although lying on the OCS, is not intended to be united to the mass of things belonging to a foreign country and therefore is not exported within the meaning of the applicable Customs laws and regulations. (See definition of the term “exportation” set forth in 19 CFR § 101.1)

## HOLDINGS:

The use of a foreign-flagged vessel for the installation of flexible flowlines and umbilical lines on the OCS as described above does not constitute a violation of 46 U.S.C. App. § 883. With respect to the risers, their installation must be performed on or from the aforementioned vessel in order to be in compliance with 46 U.S.C. App. § 883.

The temporary offloading of the flexible flowlines and risers to a dock or barge in a U.S. port and their immediate loading aboard an installation vessel for transportation to an installation on the OCS does not render such articles nondutiable.

LARRY L. BURTON,

*Chief,*

*Entry Procedures and Carriers Branch.*

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ 111889

February 11, 1992

VES-3-CO:R:IT:C 111889 LLB

CATEGORY: Carriers

MR. PATRICK H. PATRICK  
JONES, WALKER, WAECHTER, POITEVENT, CARRERE AND DENEGRE  
201 St. Charles Avenue  
New Orleans, Louisiana 70170-5100

RE: Coastwise trade; Merchandise; Passengers; Crew members; Equipment of vessels; Outer Continental Shelf; Oil production platform

DEAR MR. PATRICK:

Reference is made to your letter of August 27, 1991, in which you request a ruling on issues associated with the use of a foreign-built, foreign-flag modified semi-submersible drilling vessel to be used as a stationary floating oil production station at a site on the outer Continental Shelf.

## FACTS:

It is proposed that a foreign-built and foreign-registered semi-submersible drilling vessel be modified in a United States shipyard and towed by properly qualified vessel to a point on the high seas which overlies well heads already drilled on the outer Continental Shelf. The modified production vessel would have aboard at the time of its tow from a shoreside point to the well head site, equipment essential to its intended operation. It is our understanding that no vessel or other structure will be at the high seas site at which the production vessel will arrive and be anchored and subsequently attached to the seabed well heads.

It is anticipated that the production vessels would remain stationary, except for incidental movement resulting from the action of winds, tides, and wave action, and would remain at the same site for a period of eight to ten years.

The vessel would operate as a production platform by means of a device known as a multi-well template which will be placed on the sea floor over



several well heads. A flexible pipe known as a marine riser will be attached to the template for the purpose of funneling oil or natural gas from the wells to the vessel. Oil and natural gas would leave the production vessel via pipelines which would be installed. These lines would either lead ashore, or to an off shore gathering platform. It is stated that the only materials aboard would be necessary equipment, the only persons aboard would be production crew members, and any other vessels involved in moving between the production vessel and points within the jurisdiction of the United States would be coastwise qualified.

**ISSUE:**

Whether the movement and use of a foreign built and documented drilling vessel/production platform, as described in the Facts portion of this ruling, is permissible under the coastwise laws as administered by the Customs Service.

**LAW AND ANALYSIS:**

The coastwise law pertaining to the transportation of merchandise, section 27 of the Act of June 5, 1920, as amended (41 Stat. 999; 46 U.S.C. App. 883, often called the Jones Act), provides that:

No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States . . . embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States . . .

The Act of June 19, 1886, as amended (24 Stat. 81; 46 U.S.C. App. 289, sometimes called the coastwise passenger law), provides that:

No foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed.

For your general information, we have consistently interpreted this prohibition to apply to all vessels except United States-built, owned, and properly documented vessels (see 46 U.S.C. 12106, 12110, 46 U.S.C. App. 883, and 19 C.F.R. 4.80).

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in the internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ. These laws have also been interpreted to apply to transportation between points within a single harbor. Merchandise, as used in section 883, includes any article, including even materials of no value (see the amendment to section 883 by the Act of June 7, 1988, Pub. L. 100-329; 102 Stat. 588).

Under Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a) (OCSLA)), the laws of the United States are extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the

purpose of exploring for, developing, or producing resources therefrom to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State. The provisions for dutiability of merchandise, as well as the coastwise and other navigation laws, apply to production platforms. C.S.D. 83-52.

Not included within the general meaning of merchandise is the equipment of a vessel which will be used by that vessel.

Such materials have been defined as articles, “. . . necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board.” (Treasury Decision 49815(4), March 13, 1939). Customs has specifically ruled that, “Vessel equipment placed aboard a vessel at one United States port may be removed from the vessel at another United States port at a later date without violation of the coastwise laws.” (Customs Ruling Letter 102945, November 8, 1978). Decisions as to whether a given article comes within the definition of “vessel equipment” are made on a case by case basis.

For the purposes of the coastwise laws, the term “passenger” is defined in section 4.50 (b), Customs Regulations (19 CFR 4.50 (b)), as “. . . any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.” In view of the fact that the vessel in question will have aboard only necessary equipment and crew members during its movement and, further, that it will be towed by a qualified vessel from a coastwise point to a point on the high seas overlying a point on the outer Continental Shelf at which there will be no surface installation, we have determined that no coastwise laws will be violated in the course of the proposed vessel movement. It should be noted, however, that the production vessel will itself become a coastwise point once attached to the seabed, and any further movements of equipment and personnel from a coastwise point to the production site must be accomplished by use of a coastwise qualified vessel.

**HOLDING:**

Following a thorough review of the facts and analysis of the relevant law and precedents, we have determined, in accord with the information set forth in the Law and Analysis section of this ruling letter, the proposed operation does not violate any of the coastwise laws administered by the Customs Service.

B. JAMES FRITZ,  
*Chief,*  
*Carrier Rulings Branch.*

## [ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ 113841  
February 28, 1997  
VES-3:RR:IT:EC 113841 LLB  
CATEGORY: Carriers

MR. GEORGE H. ROBINSON, JR.  
822 Harding Street  
P.O. Box 52800  
Lafayette, Louisiana 70505-2008

RE: Coastwise trade; Cable and pipe laying operations; Outer Continental Shelf; Subsea production site; 46 U.S.C. App. 883; 43 U.S.C. 1333(a)

DEAR MR. ROBINSON:

Reference is made to your letter of February 17, 1997, in which you request that Customs rule upon the proposed use of a non-coastwise-qualified vessel in the transportation of so-called hydraulic and electrical "umbilicals", the transportation of a Remotely Operated Vehicle (ROV), and the towing of pipeline sections. Our determination is contained in the ruling below.

## FACTS:

The company known as BP Exploration & Oil, Inc., intends to initiate a gas and oil exploration project on the outer Continental Shelf of the United States adjacent to the coast of Louisiana. The Company sought and received a Customs Ruling on various aspects of the project (Ruling Letter 113726), and now proposes additional operations for which a ruling is sought.

The specific operation for which the previous ruling was sought involved the proposed installation by a non-qualified vessel of two "umbilicals" which would be laid on the seabed between a production manifold and a fixed production platform on the outer Continental shelf. One of the umbilicals would be for hydraulic purposes and the other would be for electrical uses. The umbilicals were described as being flexible cables. The manifold and the platform would be located some fourteen miles apart. In addition to the umbilicals being placed on the seabed, it was stated that their terminal ends would be affixed to the manifold at one point, and to the platform at the other. In addition to the regular vessel crew, it was proposed that several American technicians ride aboard the installing vessel in order to assist in the attachment process. The role of the technicians, as described in the ruling request and elaborated upon in a telephone conversation of November 6, 1996, would be to monitor the installation process along the fourteen-mile course of umbilical laying by use of specialized equipment (the ROV), as well as to briefly board the semi-submersible vessel for the purpose of further monitoring the attachment process. The technicians would re-board the installing vessel following the manifold attachment process.

In the matter currently under consideration, three questions are posed for our consideration:

1. Whether the foreign-flag installing vessel may call at a United States port with foreign-laden umbilicals and spare umbilicals aboard for the purpose of loading the ROV aboard for transportation to the installation site.

2. Whether that same vessel may return to port at the conclusion of the operation for the purpose of off-loading the ROV and any unused umbilicals.

3. Whether a foreign-flag towing vessel may be utilized to tow seven-mile long pipeline segments from a United States port to the off-shore production platform on the outer Continental Shelf

ISSUE:

Whether the services of non-coastwise-qualified vessels may be utilized to load, transport and unload the Remotely Operated Vehicle to be used in the described operation; to transport and unload unused umbilicals; and to tow pipeline segments between coastwise points .

LAW AND ANALYSIS:

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

Title 46, United States Code Appendix, section 883, the coastwise merchandise statute often called the "Jones Act", provides in part that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

Not included within the general meaning of merchandise is the equipment of a vessel which will be used by that vessel. Such materials have been defined as articles, ". . . necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." (Treasury Decision 49815(4), March 13, 1939). Customs has specifically ruled that, "Vessel equipment placed aboard a vessel at one United States port may be removed from the vessel at another United States port at a later date without violation of the coastwise laws." (Customs Ruling Letter 102945, November 8, 1978). Decisions as to whether a given article comes within the definition of "vessel equipment" are made on a case by case basis.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a); "OCSLA")I , provides in part that the laws of the United States are extended to: "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a state."

Under the foregoing provision, we have ruled that the coastwise laws and other Customs and navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf ("OCS") . We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the outer Continental Shelf for the purpose of resource exploration operations.

The Customs Service has previously ruled (Ruling 112866 dated August 31, 1993) that the laying of cable is not considered coastwise trade. When cable is laid, it is paid out in a continual operation while the vessel proceeds. Customs distinguishes between such an operation and the act of unloading merchandise since there is no single identifiable coastwise point involved in the laying of cable.

With respect to the operation presently under consideration, we find that both the umbilicals (including spares), and the ROV are considered to be equipment of the foreign-flag umbilical laying vessel which are essential to completion of the mission of the vessel. With respect to the umbilicals, even if they were regarded as merchandise the facts indicate that they will be placed aboard the vessel in a foreign port. This being the case, there would be no transportation between coastwise points. In light of our determination that the named articles are considered equipment, the transportation proposed in the first two enumerated questions, above, may be accomplished with the use of a non-coastwise-qualified vessel.

With respect to the third question presented for our consideration, we find the proposed operation to be in the nature of a coastwise transportation of merchandise rather than a laying of pipeline which, as discussed above, would not be a transportation within the meaning of the merchandise statute (section 883). Unlike pipelaying which is accomplished in a continuous operation with no specifically identifiable point of unloading, the proposal under consideration involves the transportation of pipeline segments from a shore point in the United States to an operating site on the OCS which is considered to be a second coastwise point. The transaction will thus involve a loading at one coastwise point and an unloading at a second such point in violation of the statute,

**HOLDING:**

Following a thorough consideration of the facts and analysis of the law and applicable precedents, we have determined that the matters posed in enumerated questions 1 and 2, as stated in the Facts portion of this ruling, may be accomplished with the use of a foreign-flag vessel. The transportation posed in enumerated question 3, however, may be lawfully accomplished only with the services of a coastwise-qualified vessel.

JERRY LADERBERG,  
*Acting Chief,*  
*Entry and Carrier Rulings Branch.*

## [ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ 115938  
April, 1, 2003  
VES-3-06-RR:IT:EC 115938 LLO  
CATEGORY: Carriers

J. KELLY DUNCAN, ESQ.  
JONES WALKER  
201 St. Charles Ave.  
New Orleans, Louisiana 70170-5100

RE: Coastwise Trade, Outer Continental Shelf; 43 U.S.C. § 1333(a); 46 U.S.C. App. §§ 289, 883

DEAR MR. DUNCAN:

This is in response to your letter dated March 6, 2003, on behalf of your client, [], requesting a ruling on the use of non-coastwise qualified liftboats for various activities within United States waters and waters overlaying the Outer Continental Shelf (OCS). You have requested that we expedite our consideration of your request, and that we accord confidential treatment to this matter. Our ruling on the matter follows.

## FACTS:

[] liftboats are U.S. documented self-propelled, self-elevating work platforms with legs, cranes and living accommodations. When furnishing well services, the liftboats serve as work platforms, equipment staging areas and crew quarters for liftboat personnel engaged in oil and gas well drilling, completion, intervention, construction, maintenance and repair services. The liftboats perform work for and alongside offshore oil or gas platforms. The liftboats also provide services necessary to produce and maintain offshore wells as well as plug and abandonment services at the end of their life cycle. The larger, multipurpose liftboats also are used in well-intervention and perform heavy lifts, support pipeline tie-ins and other construction related projects. []. Services furnished by the liftboats include the installation of compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components by the personnel and technicians aboard the liftboats as part of the construction and maintenance operations performed by the liftboats. Other services furnished from the liftboats include fishing for tools, thru-tubing services, logging, multilaterals, milling and cutting, cementing operations, casing patch, wellhead services, completions, coiled tubing, pumping and stimulation, blowout control, snubbing, recompletion, pipeline services (including cleaning, commissioning, testing, flooding and dewatering), well workover, nitrogen jetting, welding, offshore construction, engineering and well and reservoir evaluation services.

These services are furnished in connection with oil and natural gas wells, and platforms on the OCS and shallow waters of the Gulf of Mexico and, from time to time, in internal waters and bays of the United States. The personnel transported on board these liftboats would be involved in the furnishing of these services and would be crew employed by [].

With respect to the liftboats equipped with cranes, such cranes are used for lifting and moving equipment to and from a customer's platform or well-head in connection with construction, maintenance and other services furnished by the liftboats. You indicate that the liftboats are stationary, with their legs imbedded in the seabed, during any lifting or setting operation. Accordingly, any movement of cargo lifted by a liftboat crane is effected exclusively by the operation of the crane and not by movement of the liftboat. You note that the only persons and goods transported on the liftboats would be personnel, third party technicians and equipment and materials utilized in the furnishing of the services of the liftboats.

You further state that at no time would such personnel, technicians or equipments or materials be moved from one coastwise point to another where they would be discharged except for such personnel, third party technicians and equipment and materials utilized in performing the services from which the liftboat has been engaged. You indicate that the only time that any persons might permanently disembark from a liftboat that is servicing an offshore platform and board the platform is in the event of safety considerations, such as work schedules requiring crew changes, personal health reasons or significant inclement weather, i.e. a hurricane that threatens the seaworthiness of the liftboat and well-being of those aboard. You go on to note that in such an event, such persons will return to a U.S. port by means of coastwise - qualified vessels or helicopters. Thus, there would be no carriage or discharge of any goods, equipment or personnel, other than such as are necessary to the mission, operation and/or navigation of the liftboats.

You further indicate that the subject liftboats will sometimes be time-chartered to customers but will always be operated and crewed by [ ]'s personnel. You state that the liftboats may leave from a U.S. port and travel to one or more coastwise points, carrying its equipment, personnel, third party technicians and one or more representatives from the customer for whom [ ] is performing services and, upon completion of the services, the liftboat will return with its equipment, personnel, technicians and the customer's representatives to a U.S. port. You indicate that on other occasions, the liftboat may travel to another platform to perform services for the same or another customer, but that in no event would any person permanently disembark from the vessel at the offshore site except for safety and health reasons as discussed above.

#### ISSUE:

Whether the proposed activities may be accomplished by non-coastwise-qualified liftboats as described above in compliance with the coastwise laws.

#### LAW AND ANALYSIS:

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the U.S. embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the U.S. Title 46, United States Code Appendix, §289 (46 U.S.C. App. § 289), prohibits foreign vessels from transporting passengers between ports or places in the U.S. either directly or by way of a foreign port, under penalty of \$200 for each passenger so transported and landed. Title 46, United States Code Appendix, §883 (46 U.S.C. App. §883), the coastwise merchandise statute often called the "Jones Act," provides in part that no merchandise shall be transported between points in the U.S. em-

braced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the U.S.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt 3 nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters landward of the territorial sea baseline.

The Customs Bulletin and Decisions Vol. 36, No. 23, dated June 5, 2002, outlined Customs' position regarding which persons transported on a vessel are considered "passengers" as that term is defined in §4.50(b), Customs Regulations (19 C.F.R. §4.50(b)). Under this interpretation, persons transported on a vessel will be considered passengers unless they are directly and substantially connected with the operation, navigation, ownership, or business of that vessel. Additionally, persons transported free of charge as an inducement for future patronage or good will are considered passengers. Finally, persons transported on a vessel for reasons connected to business interests not directly related to the business of the vessel itself would be considered passengers.

Section 4(a) of the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. §1333(a) (OSCLA), provides in part that the laws of the U.S. are extended to: the subsoil and seabed of the OCS and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the OCS were an area of exclusive Federal jurisdiction within a state.

Under the foregoing provision, we have ruled that the coastwise laws and other Customs navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the OCS for the purpose of resource exploration operations.

As noted in the facts, several different scenarios are put forth by the inquirer for consideration. With respect to the applicability of 46 U.S.C. App. §883 to the proposed activities, we note as follows

In Ruling Letter 112218 dated July 22, 1992, which involved non-coastwise qualified barges used as oil and gas well drilling, workover, and service vessels, certain of the facts were described as follows:

. . . "workover" and "service" barges are used as platforms or transport vessels for work to be performed at a well. Such work may consist of removing broken tools from a well shaft, repairing tools aboard a barge and placing them in a well shaft, well cleaning and well stimulation (the injection of chemicals into a well in order to stimulate the production of oil and gas). Transportation services may include the carriage of cement, chemicals, and other materials for use in drilling, as well as crew stores. Ruling 112218 went on to hold that: In view of the fact that the vessels in question will have aboard only necessary equipment and crew members during their movements, we have determined that no coastwise laws will be violated in the course of the proposed vessel voyages. (See also, Ruling Letter 113137)

Additionally, in Ruling Letter 108223, dated March 13, 1986, which involved the provision of stimulation services to OCS wells, Customs stated as follows:



. . . we have held that the use of a vessel to blend, mix and place cement in oil wells is not a use of the vessel in coastwise trade. On the basis of this ruling, we have ruled that the use of a non-coastwise qualified vessel in oil well stimulation, described as the blending of specific mixtures of water, hydrochloric acid and other agents and then pumping the blended mixture into an oil field, is not coastwise trade. We have ruled that the transportation of the cement used in the oil wells and that of the chemicals, etc. used in the oil well stimulation is not coastwise trade subject to 46 U.S.C. App. 883 because such transportation is only of supplies incidental to the vessel's service which are consumed in that service. (See also Ruling Letter 113137)

Furthermore, it should be noted that Customs has held that the equipment of a vessel which will be used by that vessel, is not included in the general meaning of "merchandise" for purposes of 46 U.S.C. App. §883. Such articles include that which is "necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." (Treasury Decision 49815(a), dated March 13, 1939). Customs has specifically ruled that, "Vessel equipment placed aboard a vessel at one U.S. port may be removed from the vessel at another U.S. port at a later date without violation of the coastwise laws." (Ruling Letter 102945) Decisions as to whether a given article comes within the definition of "vessel equipment" are made on a case - by - case basis. The articles necessary to carry out the vessel functions described above, constitute equipment that is fundamental to the vessel's operation and is not "merchandise" for purposes of 46 U.S.C. App. §883. Any additional cargo that does not constitute equipment, and is transported coastwise in the non-qualified liftboats would be transported in violation of coastwise laws.

With respect to the liftboats equipped with cranes, such cranes are used for lifting and moving equipment to and from a customer's platform or well-head in connection with construction, maintenance and other services furnished by the liftboats. The liftboats are stationary, with their legs embedded in the seabed, during any lifting or setting operation.

Customs has held that the use of a non-coastwise qualified crane vessel to load and unload cargo is not coastwise trade and does not violate 46 U.S.C. App. §883, provided that any transportation of the cargo is effected exclusively by the operation of the crane and not by movement of the vessel except for necessary movement which is incidental to a lifting operation while it is taking place (see Ruling Letter 111446). In the present matter it is stated that the crane vessel will remain stationary during actual lifting and setting operations. In light of these facts we find that the proposed lifting and setting operations are permissible under 46 U.S.C. App. §883.

In regard to the applicability of 46 U.S.C. App. § 289, the inquirer states that the only persons transported on the liftboats would be crew and such personnel utilized in the furnishing of the services by the liftboats. At no time would such personnel be transported from one coastwise point to another except for safety considerations, crew changes, health reasons, or inclement weather. As such, these personnel would not be "passengers" within the meaning of 19 C.F.R. §4.50(b). Consequently, their proposed transportation would not violate 46 U.S.C. App. §289.

In view of the fact that the vessels in question will have aboard only necessary equipment and personnel during the activities in question, we have determined that no coastwise laws will be violated in the course of their proposed usage. HOLDING:

As detailed in the Law and Analysis portion of this ruling, the proposed activities as described above do not constitute coastwise trade therefore those activities may be accomplished by the subject non-coastwise qualified liftboats.

GLEN E. VEREB,  
*Chief,*  
*Entry Procedures and Carriers Branch.*

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
**HQ H029417**  
**June 5, 2008**  
**VES-3-01-OT:RR:BSTC:CCI H029417 JLB**  
**CATEGORY: Carriers**

MS. JEANNE M. GRASSO  
BLANK ROME LLP  
*Watergate*  
*600 New Hampshire Avenue, NW*  
*Washington, DC 20037*

RE: Coastwise Transportation; 46 U.S.C. §§ 55102, 55103; Vessel Equipment; Coastwise Towing; 46 U.S.C. § 55111

DEAR MR. GRASSO:

This letter is in response to your correspondence dated May 27, 2008, on behalf of your client, Hannah Marine Corporation (the "Company"), in which you inquire about whether your client's use of a non-coastwise-qualified barge as an exhibit hall constitutes a violation of 46 U.S.C. §§ 55102 and 55103. Our ruling on your request follows.

#### **FACTS**

The Company is chartering a coastwise-qualified tug and a non-coastwise-qualified deck barge to a charterer that will use the barge as a floating exhibit hall. In order to facilitate its use as an exhibit hall, the barge will first be modified in the U.S. by adding customized shipping containers that will either be bolted or welded to the deck. Then the floating exhibit hall will be towed by a coastwise-qualified tug to various U.S. and Canadian ports. The barge will be carrying products and equipment used for demonstration/exhibition purposes and will not carry any passengers during its voyages. Any staff of the exhibit hall will travel over land or by air to each port, or aboard the coastwise-qualified tug.

Upon completion of the charter, the exhibit hall structure will be removed from the barge in the U.S. but the removal may occur at a location different from the location where the barge was modified. As for the products and equipment that will be used for demonstration/exhibition purposes, these items will either be unladen at the same coastwise point at which they were laden or, if they will be unladen at a different coastwise point than which they were laden, they will be transported aboard the coastwise-qualified tug during all voyages.

**ISSUE**

- (1) Whether the use of the non-coastwise-qualified barge and coastwise-qualified tug as described above constitute an engagement in coastwise trade pursuant to 46 U.S.C. §§ 55102 and 55103?
- (2) Whether the exhibit hall structure described above is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c)?

**LAW AND ANALYSIS**

The Jones Act, former 46 U.S.C. App. § 883 recodified as 46 U.S.C. § 55102, pursuant to P.L. 109–304 (October 6, 2006), states that “a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port” unless the vessel was built in and documented under the laws of the United States and owned by persons who are citizens of the United States. (See also 19 C.F.R. §§ 4.80, 4.80b). Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

Pursuant to 19 U.S.C. § 1401(c), the word “merchandise” is defined as “goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of Title 31.” For purposes of the Jones Act, merchandise also includes “valueless material.” See 46 U.S.C. § 55102(a)(2). U.S. Customs and Border Protection (“CBP”) Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a coastwise point is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a).

In this case, the barge will carry products and equipment to be displayed in the exhibit hall. You present two different scenarios for unloading this merchandise upon conclusion of the exhibit. In the first scenario, the merchandise will be unladen at the same coastwise point at which it was laden. In that instance, the coastwise transportation of the subject merchandise on the non-coastwise-qualified barge does not constitute a violation of 46 U.S.C. § 55102.

In the second scenario, the remaining merchandise will be unladen at a different coastwise point than the point of lading. Accordingly, the vessel transporting such merchandise must be coastwise-qualified. This requirement is satisfied by your assertion that “any exhibit hall materials and personnel that will travel with the vessels during coastwise transits that may be unladen at different coastwise points than at which laden will transit aboard the coastwise-qualified tug.” Since the merchandise, which will ultimately be unladen at another coastwise point, will be transported between coastwise points aboard the coastwise-qualified tug, in lieu of the non-coastwise-qualified barge, no violation of 46 U.S.C. § 55102 exists.

The coastwise passenger statute, former 46 U.S.C. App. § 289 recodified as 46 U.S.C. § 55103, pursuant to P.L. 109–304 (October 6, 2006), states that no foreign vessel shall transport passengers “between ports or places in the United States to which the coastwise laws apply, either directly or by way of a foreign port,” under a penalty of \$300 for each passenger so transported and landed. See also 19 C.F.R. § 4.80(b)(2). You state that all the

staff of the floating exhibit hall will travel to the different ports by land, air or aboard the coastwise-qualified tug. Accordingly, given that no individuals will be transported aboard the non-coastwise-qualified vessel, no violation of 46 U.S.C. § 55103 exists. Furthermore, as discussed above, transporting the subject individuals aboard a coastwise-qualified vessel, such as the coastwise-qualified tug in question, does not constitute a violation of 46 U.S.C. § 55103.

Pursuant to the coastwise towing statute, former 46 U.S.C. App. § 316(a) recodified as 46 U.S.C. § 55111, pursuant to P.L. 109–304 (October 6, 2006), except when towing a vessel in distress, only a coastwise-qualified vessel may do any part of any towing between coastwise points. Given that a coastwise-qualified tug is utilized, there would be no violation of the coastwise towing statute, 46 U.S.C. § 55111.

#### Exhibit Hall Structure

For its use as a floating exhibit hall, the barge will be modified to include customized shipping containers either bolted or welded to the deck of the barge. You state that the exhibit hall structure will ultimately be removed in the U.S. upon completion of the charter but the removal may occur at a different coastwise point than the point of modification. In accordance with the Jones Act, 46 U.S.C. § 55102, if the exhibit hall structure constitutes “merchandise” pursuant to 19 U.S.C. § 1401(c), its coastwise transportation aboard the non-coastwise-qualified barge is a violation of 46 U.S.C. § 55102. Thus, you assert that the materials and equipment installed to modify the barge are vessel equipment and accordingly, they may be transported aboard the vessel without violating 46 U.S.C. § 55102.

As stated above, merchandise for purposes of these statutory requirements “means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of Title 31.” 19 U.S.C. § 1401(c). However, merchandise does not include the equipment of a vessel so long as it is used by that vessel. Such articles have been defined as those which are “. . . necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board.” See Headquarters Ruling Letter 114298, dated July 7, 1998 quoting Treasury Decision (“T.D.”) 49815(4), March 13, 1939. Whether such articles constitute vessel equipment is a case-by-case determination. See Headquarters Ruling Letter 115938, dated April, 1, 2003; Headquarters Ruling Letter 114487, dated October 19, 1998. CBP has specifically ruled that “vessel equipment placed aboard a vessel at one U.S. port may be removed from the vessel at another U.S. port at a later date without violation of the coastwise laws.” See Headquarters Ruling Letter 113137, dated June 27, 1994; Headquarters Ruling Letter 115938, dated April, 1, 2003.

In Headquarters Ruling Letter 115356, dated May 22, 2001, a non-coastwise-qualified power barge was retrofitted with electric generating equipment in Mississippi. When the equipment, which was welded to the deck, was unladen in Oregon, CBP held that since the generating equipment was integral to the operation of the vessel as a power barge and since the equipment was transported aboard the vessel on which it was used, it was vessel equipment that could be unladen and uninstalled from the barge without violating the Jones Act, 46 U.S.C. § 55102.

CBP has consistently held that vessel equipment consists of articles necessary to carry out a vessel’s functions. See Headquarters Ruling Letter

112218, dated July 22, 1992 (equipment transported aboard non-coastwise-qualified oil and gas well drilling, workover and service barges used to remove broken tools from a well shaft, perform well cleaning and other tasks is vessel equipment since it is necessary to the work of the vessel); Headquarters Ruling Letter 103995, dated July 16, 1979 (the carriage of cement on a non-coastwise-qualified barge engaged in oil well stimulation is vessel equipment given that the purpose of the vessel is the blending, mixing, and placing of cement in the wells). In the present case, the subject barge's function, for the period of the charter, is to operate as an exhibit hall. In order to accomplish this purpose, it is necessary to modify the structure of the barge's deck. The exhibit hall structure, essentially the bolted or welded customized shipping containers, is integral to the operation of the vessel as an exhibit hall. Consequently, the structure, which is transported aboard the vessel on which it is used, constitutes vessel equipment as defined in T.D. 49815(4), not merchandise as defined in 19 U.S.C. § 1401(c). As a result, no violation of 46 U.S.C. § 55102 exists if the structure is unladen at a different coastwise point than the point of lading.

**HOLDING**

- (1) The proposed use of the non-coastwise-qualified barge and coastwise-qualified tug does not constitute an engagement in coastwise trade for purposes of 46 U.S.C. §§ 55102 and 55103.
- (2) The subject exhibit hall structure constitutes vessel equipment, not merchandise. Accordingly, the coastwise transportation of the subject structure does not constitute a violation of 46 U.S.C. § 55102.

GLEN E. VEREB,  
*Chief,*  
*Cargo Security,*  
*Carriers and Immigration Branch.*

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H032757  
July 28, 2008  
VES-3-01-OT:RR:BSTC:CCI H032757 CK  
CATEGORY: Carriers

MR. MARTIN E. MCDANIEL, JR.  
LOCKE LORD BISSELL & LIDDELL LLP  
3400 JP Morgan Chase Tower, 600 Travis  
Houston, TX 77002

RE: Coastwise Transportation; 46 U.S.C. §§ 55102, 55103; Vessel Equipment; Coastwise Towing; 46 U.S.C. § 55111

DEAR MR. MCDANIEL:

This letter is in response to your correspondence dated July 2, and July 15, 2008, on behalf of your client, Oliver Schrott Kommunikation ("OSK") (the "Company"), in which you inquire about whether your client's use of a non-coastwise-qualified barge as an exhibit hall constitutes a violation of 46 U.S.C. §§ 55102 and 55103. Our ruling on your request follows.

## FACTS

The Company was hired to design and construct a mobile exhibition center upon a chartered non-coastwise-qualified deck barge, formerly a tank barge, which will be used as a floating exhibit hall. In order to facilitate its use as an exhibit hall, the barge will first be modified in the U.S. by adding approximately 50 customized shipping containers that will be secured in several levels to each other and to the barge so as to provide some 10,000 square feet of exhibition space. A specially designed “platform” is being affixed to the barge’s upper deck where it will remain until the charter is terminated. The customized shipping containers which comprise the exhibit hall will be secured to the platform (and in turn to the barge) by “twist locks.” The arrangement will stay in place throughout the charter until termination whereupon the platform and exhibit hall will be removed.

The purpose of the exhibit hall barge will serve as center in which Siemens will conduct trade shows and multi-media presentations of its various products for its present and/or potential customers at different U.S. and Canadian ports. The exhibit hall will contain Siemens products and equipment used solely for demonstration purposes. The barge will not carry any passengers during its voyages between ports. Any staff for the exhibit hall will not travel on the barge between ports. The floating exhibit hall will be towed by a coastwise-qualified tug to various U.S. and Canadian ports.

Upon completion of the charter, the exhibit hall structure will be removed from the barge in the U.S. but the removal may occur at a location different from the location where the barge was modified.

## ISSUE

Whether the use of the non-coastwise-qualified barge and coastwise-qualified tug as described above constitute an engagement in coastwise trade pursuant to 46 U.S.C. §§ 55102 and 55103?

Whether the exhibit hall structure described above is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c)?

## LAW AND ANALYSIS

The Jones Act, former 46 U.S.C. App. § 883 recodified as 46 U.S.C. § 55102, pursuant to P.L. 109–304 (October 6, 2006), states that “a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port” unless the vessel was built in and documented under the laws of the United States and owned by persons who are citizens of the United States. (See also 19 C.F.R. §§ 4.80, 4.80b). Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

Pursuant to 19 U.S.C. § 1401(c), the word “merchandise” is defined as “goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of Title 31.” For purposes of the Jones Act, merchandise also includes “valueless material.” See 46 U.S.C. § 55102(a)(2). U.S. Customs and Border Protection (“CBP”) Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of mer-

chandise takes place when merchandise laden at a coastwise point is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a).

In this case, the barge will carry products and equipment to be displayed in the exhibit hall. You did not state whether the exhibit hall materials will be laden at one coastwise port and unladen at a different coastwise point. Should that be the case, the vessel transporting such merchandise must be coastwise-qualified. Consequently, whether the merchandise will be transported between coastwise points aboard the coastwise-qualified tug or the non-coastwise-qualified barge, is determinative of whether a violation of 46 U.S.C. § 55102 exists.

The coastwise passenger statute, former 46 U.S.C. App. § 289 recodified as 46 U.S.C. § 55103, pursuant to P.L. 109-304 (October 6, 2006), states that no foreign vessel shall transport passengers “between ports or places in the United States to which the coastwise laws apply, either directly or by way of a foreign port,” under a penalty of \$300 for each passenger so transported and landed. See also 19 C.F.R. § 4.80(b)(2). You state that all the staff of the floating exhibit hall will not travel to the different ports aboard the barge. Accordingly, given that no individuals will be transported aboard the non-coastwise-qualified vessel, no violation of 46 U.S.C. § 55103 exists.

Pursuant to the coastwise towing statute, former 46 U.S.C. App. § 316(a) recodified as 46 U.S.C. § 55111, pursuant to P.L. 109-304 (October 6, 2006), except when towing a vessel in distress, only a coastwise-qualified vessel may do any part of any towing between coastwise points. Given that a coastwise-qualified tug is utilized, there would be no violation of the coastwise towing statute, 46 U.S.C. § 55111.

#### Exhibit Hall Structure

For its use as a floating exhibit hall, the barge will be modified to include customized shipping containers attached by “twist locks” to the platform built upon the deck of the barge. You state that the exhibit hall structure will ultimately be removed in the U.S. upon completion of the charter but the removal may occur at a different coastwise point than the point of modification. In accordance with the Jones Act, 46 U.S.C. § 55102, if the exhibit hall structure constitutes “merchandise” pursuant to 19 U.S.C. § 1401(c), its coastwise transportation aboard the non-coastwise-qualified barge is a violation of 46 U.S.C. § 55102. Thus, you assert that the materials and equipment installed to modify the barge are vessel equipment and accordingly, they may be transported aboard the vessel without violating 46 U.S.C. § 55102.

As stated above, merchandise for purposes of these statutory requirements “means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of Title 31.” 19 U.S.C. § 1401(c). However, merchandise does not include the equipment of a vessel so long as it is used by that vessel. Such articles have been defined as those which are “. . . necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board.” See Headquarters Ruling Letter 114298, dated July 7, 1998 quoting Treasury Decision (“T.D.”) 49815(4), March 13, 1939. Whether such articles constitute vessel equipment is a case-by-case determination. See Headquarters Ruling Letter 115938, dated April, 1, 2003; Headquarters Ruling Letter 114487, dated October 19, 1998. CBP has specifically ruled that “vessel equipment

placed aboard a vessel at one U.S. port may be removed from the vessel at another U.S. port at a later date without violation of the coastwise laws.” See Headquarters Ruling Letter 113137, dated June 27, 1994; Headquarters Ruling Letter 115938, dated April, 1, 2003.

In Headquarters Ruling Letter 115356, dated May 22, 2001, a non-coastwise-qualified power barge was retrofitted with electric generating equipment in Mississippi. When the equipment, which was welded to the deck, was unladen in Oregon, CBP held that since the generating equipment was integral to the operation of the vessel as a power barge and since the equipment was transported aboard the vessel on which it was used, it was vessel equipment that could be unladen and uninstalled from the barge without violating the Jones Act, 46 U.S.C. § 55102.

CBP has consistently held that vessel equipment consists of articles necessary to carry out a vessel’s functions. See Headquarters Ruling Letter 112218, dated July 22, 1992 (equipment transported aboard non-coastwise-qualified oil and gas well drilling, workover and service barges used to remove broken tools from a well shaft, perform well cleaning and other tasks is vessel equipment since it is necessary to the work of the vessel); Headquarters Ruling Letter 103995, dated July 16, 1979 (the carriage of cement on a non-coastwise-qualified barge engaged in oil well stimulation is vessel equipment given that the purpose of the vessel is the blending, mixing, and placing of cement in the wells). In the present case, the subject barge’s function, for the period of the charter, is to operate as an exhibit hall. In order to accomplish this purpose, it is necessary to modify the structure of the barge’s deck. The exhibit hall structure, essentially the bolted or welded customized shipping containers, is integral to the operation of the vessel as an exhibit hall. Consequently, the structure, which is transported aboard the vessel on which it is used, constitutes vessel equipment as defined in T.D. 49815(4), not merchandise as defined in 19 U.S.C. § 1401(c). As a result, no violation of 46 U.S.C. § 55102 exists if the structure is unladen at a different coastwise point than the point of lading.

**HOLDINGS:**

The proposed use of the non-coastwise-qualified barge and coastwise-qualified tug does not constitute an engagement in coastwise trade for purposes of 46 U.S.C. §§ 55102 and 55103, provided the products and equipment to be displayed in the exhibit hall are not laden upon the barge at one U.S. point and unladen at a different coastwise point. Should the latter scenario be the case, it would constitute a violation of 46 U.S.C. § 55102.

The subject exhibit hall structure constitutes vessel equipment, not merchandise. Accordingly, the coastwise transportation of the subject structure does not constitute a violation of 46 U.S.C. § 55102.

GLEN E. VEREB,  
*Chief,*  
*Cargo Security,*  
*Carriers and Immigration Branch.*



## [ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061697  
VES-3-15 OT:RR:BSTC:CCI  
H061697 LLB  
Category: Carriers

KARLA R. HOLOMON, ESQ.  
EXXONMOBIL DEVELOPMENT COMPANY  
12450 Greenspoint Drive  
Houston, Texas 77210-4876

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a);  
modification of HQ 115185 (Nov. 20, 2000).

DEAR MS. HOLOMAN:

On November 20, 2000, U.S. Customs and Border Protection (“CBP”) issued Headquarters Ruling (“HQ”) 115185 to you. In HQ 115185, CBP held, in part, that the transportation of jumper pipes, hull mounted risers (HMR) and steel catenary riser spool pieces (SCRSP) by a foreign-flagged vessel between U.S. ports and coastwise points on the OCS was not in violation of 46 U.S.C. § 55102.<sup>2</sup> We have recently recognized that the foregoing holding in HQ 115185 is contrary to a CBP decision, specifically, T.D. 78-387 (Oct. 7, 1976), which interprets 46 U.S.C. § 55102. Consequently, this ruling, HQ H061698, modifies HQ 115185 with regard to the first two factual scenarios provided and provides a decision consistent with T.D. 78-387.

**FACTS**

The following facts are from HQ 115185. The first scenario presented for our consideration involves the installation of jumper pipes on the Gulf of Mexico ocean floor. A jumper pipe is a piece of pipe approximately 50–85 feet in length. The jumper pipes will be used to connect subsea wells to a subsea pipeline. This subsea production equipment, which will be in place at the site where the jumper pipe installation will occur, will not be operational at the time of installation. A subsea pipeline will carry produced fluids from the subsea wells to an existing platform. The jumper pipes, which will be fabricated in Louisiana, will be transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Louisiana port and proceed to the site where the vessel’s crew will install the jumpers. The vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

The second scenario presented for our consideration involves the installation of HMR and SCRSP on the side of a deep draft caisson vessel (DDCV) that is currently in operation. The HMR and SCRSP are flanged pipe spools approximately 200 feet and 40 feet in length, respectively. Their purpose is to connect pipeline terminations to interconnect piping running to topside processing equipment. The HMR and SCRSP will be bolted together and installed in existing clamps that are attached to the side of the DDCV. Pro-

---

<sup>2</sup>Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.

duced fluids will be carried through the subsea pipeline and the HMR and SCRSP to the topside equipment for processing. The aforementioned subsea equipment (pipelines and interconnect piping) will be in place at the location where the riser installation occurs but will not be operational at the time of installation. When installed, the top 30 feet of the HMR will be above the waterline. The remaining 170 feet of the HMR and SCRSP will be installed below the waterline. The HMR and SCRSP will be fabricated in Texas and transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Texas port and proceed to the site where the vessel's crew will install the HMR and SCRSP. The vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

Under the foregoing scenarios, CBP held in HQ 115185, that the foregoing coastwise transportation of the jumper pipes, HMR, and SCRSP would not be in violation of 46 U.S.C. § 55102. As explained in the "Law and Analysis" section of this ruling, this holding is inapposite to T.D. 78-387.

#### ISSUE

Whether the transportation of the jumper pipes, HMR, and SCRSP, between coastwise points would be in violation of 46 U.S.C. § 55102.

#### LAW AND ANALYSIS

The coastwise laws prohibit the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be "coastwise qualified." The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the "Jones Act", provides in pertinent part, that the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. "[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material." *Id.* at 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c)(stating that "[t]he word 'merchandise' means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .") The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>3</sup> provides, in part, that the laws of the United States are extended to:

---

<sup>3</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any installation or other device (other than a ship or a vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The subject of this modification is whether the transportation of the subject merchandise would be in violation of 46 U.S.C. § 55102. In T.D. 78-387 (Oct. 7, 1976), CBP enumerated several circumstances in which the transportation of merchandise between coastwise points would not violate the coastwise laws. The proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*: pipe-laying; repairing pipe and underwater portions of a drilling platform; installation and transportation of anodes; transportation of pipeline burial tools; transportation of pipeline repair materials; and installation and transportation of pipeline connectors and wellheads.

CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying [sic] operation which makes the operation permissible.” See subparagraph (1). CBP noted, however, that the transportation of pipe by any vessel other than a pipe-laying vessel between two coastwise points would have to be accomplished by a coastwise-qualified vessel. *Id.*

T.D. 78-387 distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would be considered merchandise and would have to be accomplished by a coastwise-qualified vessel. T.D. 78-387, subparagraph (6) (emphasis added). CBP emphasized that the foregoing repair work had to be done “on or from” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.*; see also subparagraph (4) (holding that the “transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipe-laying operations is not an activity prohibited by the coastwise laws since the tools are considered to be part of the legitimate equipment of that vessel).

CBP also held that the vessel’s installation and transportation of the pipeline connectors to the offshore drilling platform and sub-sea wellheads was not coastwise trade and would not be in violation of the coastwise laws *if* the pipeline connectors were installed by the crew of the work barge *incidental to the pipe-laying operations*. See T.D. 78-387, subparagraph (4). *Id.* (emphasis added).

In the present case, you propose to transport pieces of pipe (jumper pipes), HMR, and SCRSP from Louisiana and Texas, respectively, to be installed at coastwise points in the Gulf of Mexico. As stated above, pipe-laying is not an engagement in coastwise trade if the pipe is paid out. Because the pipes would be laden at a Louisiana port and unladen and installed at a sub-sea wellhead on the OCS, not paid out, such activity would be an engagement in

coastwise trade and the transportation of the pipe would be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (1). To the extent that all of the foregoing merchandise are pipeline connectors, the installation and transportation of such would not be incidental to a pipe-laying operation; therefore, the foregoing activity would be an engagement in coastwise trade and the transportation of the merchandise, e.g. jumper pipes, HMR, and SCRSP, would be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (4).

#### **HOLDING**

The jumper pipes, HMR, and SCRSP, as described above, are merchandise; therefore, the transportation of these articles between coastwise points would violate 46 U.S.C. § 55102.

#### **EFFECT ON OTHER RULINGS**

HQ 115185, dated November 20, 2000, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT J]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061698  
VES–3–15 OT:RR:BSTC:CCI  
H061698 LLB  
Category: Carriers

KEVIN T. DOSSETT, ESQ.  
PREIS, KRAFT & ROY  
520 Post Oak Boulevard  
Suite 800  
Houston, Texas 77027

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); revocation of HQ 115218 (Nov. 30, 2000).

DEAR MR. DOSSETT:

On November 3, 2000, U.S. Customs and Border Protection (“CBP”) issued Headquarters Ruling (“HQ”) 115218 you. In HQ 115218, CBP held, that the transportation of a pipeline tie-in spool piece by a foreign-flagged vessel between U.S. ports and coastwise points on the OCS was not in violation of 46 U.S.C. § 55102.<sup>4</sup> We have recently recognized that the foregoing holding in HQ 115218 is contrary to a CBP decision, specifically, T.D. 78–387 (Oct. 7, 1976), which interprets 46 U.S.C. § 55102. Consequently, this ruling, HQ H061698, revokes HQ 115218 and provides a decision consistent with T.D. 78–387.

---

<sup>4</sup>Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109–304, enacted on October 6, 2006.

**FACTS**

The following facts are from HQ 115218. A large subsea engineering concern, has been awarded a contract to install a pipeline tie-in spool piece between a previously-laid flowline and a subsea manifold in the United States Gulf of Mexico, outside territorial waters but within the Exclusive Economic Zone (“EEZ”) in the waters over the Outer Continental Shelf (“OCS”). The piece in question is a “U”-shaped deepwater flow-line tie-in spool piece with a horizontal run of 75’ and two vertical runs of 25’. It is an essential component of the previously-laid flow-line, as without it the flow-line cannot be made operative.

A Panamanian-flagged vessel will be used for the installation operation. The vessel is a multi-purpose vessel, capable of sub-sea construction, maintenance and inspection, heavy lift, and flexible flow-line, umbilical and coiled tube lay operations, among others. The vessel in question is capable of being fitted with a modular carousel system for pipe-laying operations and has been utilized as a pipe-laying vessel on previous occasions; however, during the pipeline tie-in spool piece attachment operation this equipment will not be aboard. The vessel is dynamically positioned (DP) but also capable of 4- or 8-point mooring. During the operations in questions, she will be operating under dynamic positioning and will not be moored to the sea floor.

The attachment of the pipeline tie-in spool piece will entail a separate mobilization from the pipe-laying phase of the project and will not involve the vessel that was used in the original pipe-laying phase of the operation. The pipeline tie-in spool piece attachment operation would entail the vessel departing a United States port and proceeding to one or more points in waters over the OCS within the United States’ EEZ, and thereafter returning to a United States port. In addition to its crew, other personnel necessary for the performance of the proposed operations, and the pipeline tie-in spool piece, the vessel will carry consumables and materials and equipment necessary for the completion of those operations.

The attachment of the pipeline tie-in spool piece to the previously-laid flowline and subsea manifold is a diverless operation. The pipeline tie-in spool piece is attached to a “spreader bar,” which is in turn attached to the vessel’s crane. The pipeline tie-in spool piece is then lowered into the sea and descends to the seabed. Guidance and orientation of the pipeline tie-in spool piece are controlled by remotely operated vehicles (ROVs), which are part of the vessel’s equipment. Once the connections of the pipeline tie-in spool piece to the flowline and the subsea manifold are secured, the ROVs release the spreader bar, which is then retrieved by the vessel’s crane. The ROVs then return to the vessel and the operations are complete.

Under the foregoing scenario, CBP held in HQ 115218, that the foregoing coastwise transportation of the pipeline tie-in spool piece would not be in violation of 46 U.S.C. § 55102. As explained in the “Law and Analysis” section of this ruling, this holding is inapposite to T.D. 78–387.

**ISSUE**

Whether the transportation of the pipeline tie-in spool piece, between coastwise points would be in violation of 46 U.S.C. § 55102.

**LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of merchandise between points in the United States embraced within the coastwise laws in any ves-

sel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” *Id.* at 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”). The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>5</sup> provides, in part, that the laws of the United States are extended to:

. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any installation or other device (other than a ship or a vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The subject of this revocation is whether the transportation of the subject merchandise would be in violation of 46 U.S.C. § 55102. In T.D. 78-387 (Oct. 7, 1976), CBP enumerated several circumstances in which the transportation of merchandise between coastwise points would not violate the coastwise laws. The proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*: pipelaying; repairing pipe and underwater portions of a drilling platform; installation and transportation of anodes; transportation of pipeline burial tools; transportation of pipeline repair materials; and installation and transportation of pipeline connectors and wellheads.

CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying [sic] operation which

---

<sup>5</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

makes the operation permissible.” See T.D. 78–387, subparagraph (1). CBP noted, however, that the transportation of pipe by any vessel other than a pipe-laying vessel between two coastwise points would have to be accomplished by a coastwise-qualified vessel. *Id.*

T.D. 78–387 distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would be considered merchandise and would have to be accomplished by a coastwise-qualified vessel. T.D. 78–387, subparagraph (6) (emphasis added). CBP emphasized that the foregoing repair work had to be done “on or from” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.*; see also subparagraph (4) (holding that the “transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipe-laying operations is not an activity prohibited by the coastwise laws since the tools are considered to be part of the legitimate equipment of that vessel).

CBP also held that the vessel’s installation and transportation of the pipeline connectors to the offshore drilling platform and sub-sea wellheads was not coastwise trade and would not be in violation of the coastwise laws *if* the pipeline connectors were installed by the crew of the work barge *incidental to the pipe-laying operations*. See T.D. 78–387, subparagraph (4). *Id.* (emphasis added).

In the present case, you propose to transport a pipeline tie-in spool piece to be installed at a coastwise point in the Gulf of Mexico. As stated above, transportation and installation of a pipeline connector by a pipe-laying vessel is not an engagement in coastwise trade if it is accomplished incidental to the pipe-laying activity of that same vessel. See T.D. 78–387, subparagraph (4). Here, the subject vessel is being “separately mobilized” to install a pipeline connector with a flow-line that has been previously laid. As such, such installation and transportation would not be incidental to a pipe-laying operation of that vessel; therefore, the foregoing activity would be an engagement in coastwise trade and the transportation of the subject merchandise, e.g. the pipeline tie-in spool piece, would be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (4).<sup>6</sup>

#### **HOLDING**

The pipeline tie-in spool piece, as described above, is merchandise; therefore, the transportation of this article between coastwise points would violate 46 U.S.C. § 55102.

---

<sup>6</sup>The transportation of the equipment, tools, and installation personnel would be incidental to the transportation and installation of the pipeline spool piece; therefore, a determination as to whether such personnel could be transported without violating 46 U.S.C. § 55102 and whether the equipment to install the spool piece is merchandise would be moot and will not be addressed.

**EFFECT ON OTHER RULINGS**

HQ 115218, dated November 30, 2000, is hereby revoked.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT K]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061700  
VES-3-15 OT:RR:BSTC:CCI  
H061700 LLB  
Category: Carriers

PHYLLIS PRICE  
CONTRACT ENGINEER  
COFLEXIP STENA OFFSHORE INC.  
7660 Woodway, Suite 390  
Houston, Texas 77063

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); revocation of HQ 115311 (May 10, 2001).

DEAR MS. PRICE:

On May 10, 2001, U.S. Customs and Border Protection (“CBP”) issued Headquarters Ruling (“HQ”) 115311 to you. In HQ 115311, CBP held, in part, that the transportation of flexible flow-lines, umbilical lines, and risers by a foreign-flagged vessel between U.S. ports and coastwise points on the OCS was not in violation of 46 U.S.C. § 55102.<sup>7</sup> We have recently recognized that although the foregoing holding, based on the facts presented in HQ 115311, is consistent with T.D. 78-387 (Oct. 7, 1976), the statement of law upon which this holding was based was stated incorrectly. Consequently, this ruling, HQ H061700, modifies HQ 115311 as it relates to Issue 1 of that ruling and provides a correct statement of the law as it appears in T.D. 78-387 with a corresponding analysis of the facts provided.

**FACTS**

The following facts are from HQ 115311. Coflexip Stena Offshore Inc. (“Coflexip”) is to engage in an operation involving a foreign-flagged vessel to be used for the connection of four subsea wellheads on the OCS with a tension leg platform (“TLP”) that is moored in the Typhoon Field Development, Green Canyon blocks 236 and 237, in the Gulf of Mexico. The wellheads will be linked to the TLP with flexible flowlines and risers manufactured in France and umbilical lines from the U.S. The flowlines will include three 4.5-inch inside diameter lines and one 5.3-inch inside diameter line with varying lengths of 0.9 to 2.3 miles.

---

<sup>7</sup> Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.



The planned installation will begin following the shipment of the flexible flowlines and risers by commercial vessel from Le Trait, France, to a U.S. port, where that equipment will be temporarily offloaded onto a dock or barge for immediate loading aboard a foreign-flag installation vessel. During the course of the installation, the flexible flowlines and umbilical lines will not be unloaded like cargo but will be paid out from carousels and reels on board the installation vessel during the course of the installation operation on the OCS.

Under the foregoing scenario, CBP held in HQ 115311, that the coastwise transportation of the flexible flow-lines and risers would not be in violation of 46 U.S.C. § 55102 stating the following:

With respect to the issues presented for our consideration, we note at the outset that the flexible flowlines and umbilical lines will be installed in the same manner as cable or pipe laid on the ocean floor (i.e., paid out, not unladed). Customs has long-held that the laying of cable between two points embraced within the coastwise laws of the United States is not coastwise trade. (see C.S.D. 79-346) It is therefore our position that the installation of flowlines and umbilical lines as described above is not coastwise trade and the use of a foreign-flagged vessel to effect such installation is not a violation of 46 U.S.C. App. § 883.

The risers to be installed are part of the connection apparatus used to link the wellheads to the TLP. Although the risers will not be “paid out” as will the flexible flowlines and umbilical lines described above, we note that Customs has held that the use of a foreign-flag vessel to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea wellhead would not violate the coastwise laws if the work was done from the vessel, but would violate the coastwise laws if the vessel merely transported the connectors and tools to the drilling platform or subsea wellhead and the connection operation was not performed on or from that vessel. (see Customs ruling letter 108442, dated August 13, 1986; see also Treasury Decision (T.D.) 78-387) Accordingly, the proposed use of a foreign-flag vessel in installing the risers is not violative of 46 U.S.C. App. § 883 provided such installation is performed on or from that vessel.

As explained in the “Law and Analysis” section of this ruling, the legal reference to T.D. 78-387 was not a complete statement of law.

#### **ISSUE**

Whether the use of a foreign-flagged vessel for the installation and transportation of flexible flowlines, umbilical lines and risers on the OCS as described above constitutes a violation of 46 U.S.C. § 55102.

#### **LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea

baseline, and to points located in internal waters, landward of the territorial sea baseline. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”). The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>8</sup> provides, in part, that the laws of the United States are extended to:

. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any installation or other device (other than a ship or a vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The subject of this modification is whether the transportation of the subject merchandise would be in violation of 46 U.S.C. § 55102. In T.D. 78–387 (Oct. 7, 1976), CBP enumerated several circumstances in which the transportation of merchandise between coastwise points would not violate the coastwise laws. The proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*: pipelaying; repairing pipe and underwater portions of a drilling platform; installation and transportation of anodes; transportation of pipeline burial tools; transportation of pipeline repair materials; and installation and transportation of pipeline connectors and wellheads.

CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying [sic] operation which makes the operation permissible.” See T.D. 78–387, subparagraph (1). CBP noted, however, that the transportation of pipe by any vessel other than a pipe-laying vessel between two coastwise points would have to be accomplished by a coastwise-qualified vessel. *Id.*

---

<sup>8</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

T.D. 78–387 distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would be considered merchandise and would have to be accomplished by a coastwise-qualified vessel. T.D. 78–387, subparagraph (6) (emphasis added). CBP emphasized that the foregoing repair work had to be done “on or from” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.*; see also subparagraph (4) (holding that the “transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipe-laying operations is not an activity prohibited by the coastwise laws since the tools are considered to be part of the legitimate equipment of that vessel).

CBP also held that the vessel’s installation and transportation of the pipeline connectors to the offshore drilling platform and sub-sea wellheads was not coastwise trade and would not be in violation of the coastwise laws *if* the pipeline connectors were installed by the crew of the work barge *incidental to the pipe-laying operations* of that work barge. See T.D. 78–387, subparagraph (4) (emphasis added).

In the present case, you propose to transport and install flexible flowlines and risers at a coastwise point in the Gulf of Mexico. As stated above, pipe-laying is not an engagement in coastwise trade if the pipe is paid out. See T.D. 78–387, subparagraph (1). Similarly, here the flowlines and umbilical lines are paid out; therefore, such activity would not be an engagement in coastwise trade and the transportation of the flowlines and umbilical lines would not be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (1). To the extent that the risers are used as a connection between the sub-sea wellheads and the TLP and the installation and transportation of the risers is incidental to the laying of the flexible flowlines and the umbilical lines, the foregoing activity would not be an engagement in coastwise trade and the transportation such would not be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (4).

#### **HOLDING**

The use of the subject foreign-flagged vessel for the installation and transportation of flexible flowlines, umbilical lines, and risers on the OCS, as described above, does not constitute a violation of 46 U.S.C. § 55102 insofar as the flowlines and umbilical lines are paid out and the transportation and installation of the risers is incidental to the laying of the flowlines and umbilical lines by that same vessel.

#### **EFFECT ON OTHER RULINGS**

HQ 115311, dated May 10, 2001, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT L]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061934  
VES-3-15 OT:RR:BSTC:CCI  
H061934 LLB  
Category: Carriers

MR. PATRICK H. PATRICK  
JONES WALKER  
201 St. Charles Avenue.  
New Orleans, LA 70170

RE: Coastwise transportation; 46 U.S.C. § 55102 and 46 U.S.C. § 55111;  
19 C.F.R. § 4.80b(a); modification of HQ 111889 (Feb. 11, 1992); T.D.  
78-387 (Oct. 7, 1976).

DEAR MR. PATRICK:

On February 11, 1992, Customs and Border Protection (“CBP”) issued Headquarters Ruling (“HQ”) 111889 to you. In HQ 111889, you proposed using a coastwise-qualified tugboat to tow a foreign-flagged vessel between U.S. ports and sub-sea wellheads on the Outer Continental Shelf (OCS) that would have aboard multi-well templates as well as marine risers aboard. CBP held that the foregoing activity was not in violation of 46 U.S.C. § 55102<sup>9</sup> because the foreign-flagged vessel would only have necessary equipment and crew aboard, that it would be towed to a point on the OCS where there was no surface installation, and the tow would be by a coastwise-qualified vessel. We have recently recognized that the foregoing reasoning based on the facts presented in HQ 111889, is contrary to T.D. 78-387 (Oct. 7, 1976); HQ 110959 (Aug. 8, 1990); and HQ 106910 (July 9, 1984). Consequently, this ruling, HQ H061934, modifies HQ 111889 and provides an analysis of the facts consistent with the foregoing rulings.

**FACTS**

The following facts are from HQ 111889. It is proposed that a foreign-built and foreign-registered semi-submersible drilling vessel be modified in a United States shipyard and towed by properly qualified vessel to a point on the high seas which overlies wellheads already drilled on the outer Continental Shelf. The modified production vessel would have aboard at the time of its tow from a shoreside point to the well head site, equipment essential to its intended operation. It is our understanding that no vessel or other structure will be at the high seas site at which the production vessel will arrive and be anchored and subsequently attached to the seabed wellheads. It is anticipated that the production vessels would remain stationary, except for incidental movement resulting from the action of winds, tides, and wave action, and would remain at the same site for a period of eight to ten years.

The vessel would operate as a production platform by means of a device known as a multi-well template which will be placed on the sea floor over several wellheads. A flexible pipe known as a marine riser will be attached to the template for the purpose of funneling oil or natural gas from the wells

---

<sup>9</sup>Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.

to the vessel. Oil and natural gas would leave the production vessel via pipelines which would be installed. These lines would either lead ashore, or to an offshore gathering platform. It is stated that the only materials aboard would be necessary equipment, the only persons aboard would be production crew members, and any other vessels involved in moving between the production vessel and points within the jurisdiction of the United States would be coastwise qualified.

Under the foregoing scenario, CBP held in HQ 111889 that the coastwise movement of the vessel would not be in violation of 46 U.S.C. § 55102 reasoning the following:

In view of the fact that the vessel in question will have aboard only necessary equipment and crew members during its movement and, further, that it will be towed by a qualified vessel from a coastwise point to a point on the high seas overlying a point on the outer Continental Shelf at which there will be no surface installation, we have determined that no coastwise laws will be violated in the course of the proposed vessel movement. It should be noted, however, that the production vessel will itself become a coastwise point once attached to the seabed, and any further movements of equipment and personnel from a coastwise point to the production site must be accomplished by use of a coastwise qualified vessel.

As explained in the “Law and Analysis” section of this ruling, the foregoing reasoning implies that certain articles aboard were vessel equipment which is contrary to T.D. 78–387. Further, the foregoing reasoning implies that because there was no surface installation at the point on the OCS to where the subject vessel would be towed, that point is not a coastwise point. There were two published rulings, HQ110959 (Aug. 8, 1990) and HQ 106910 (July 9, 1984) that were in existence at the time HQ 111889 was issued that hold that wellhead sites, unless permanently abandoned, are coastwise points.

#### **ISSUE**

Whether the use and transportation of the foreign-flagged vessel is an engagement in coastwise trade in violation of 46 U.S.C. § 55102.

#### **LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is pro-

hibited.<sup>10</sup> The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009). Pursuant to 46 U.S.C. § 55111,<sup>11</sup> the towing of vessels between points in the United States embraced within the coastwise laws, either directly or via a foreign port, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. See 46 U.S.C. § 55111(a) and (b)(1); see, e.g. HQ 110956 (June 7, 1990).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>12</sup> provides, in part, that the laws of the United States are extended to:

. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any installation or other device (other than a ship or a vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The subject of this modification is whether the movement of the subject vessel, which would have aboard a multi-well template and marine risers, between the U.S. shipyard and the sub-sea wellheads, would be in violation of 46 U.S.C. § 55102. CBP has held that sub-sea wellheads, unless permanently abandoned, are coastwise points. See HQ 110959 (Aug. 8, 1990) (holding that temporarily abandoned well was a coastwise point until permanently abandoned according to Department of Interior regulations); HQ 106910 (July 9, 1984) (holding that well was a coastwise site until permanently plugged and capped); HQ 113113 (June 28, 1994) (temporarily abandoned well head); and HQ 116350 (Jan. 18, 2005) (exploratory well head). In T.D. 78–387, CBP held that the vessel’s installation and transportation of the pipeline connectors to the offshore drilling platform and sub-sea wellheads was not coastwise trade and would not be in violation of the coastwise laws *if* the pipeline connectors were installed by the crew of the work barge *incidental to the pipe-laying operations*. See T.D. 78–387, subparagraph (4). *Id.* (emphasis added). T.D. 78–387, also held that the use of a vessel in the transportation of machinery or production equipment to a coastwise point, would be deemed a use in the coastwise trade. See *id.* at subparagraph (8).

Here, to the extent that the risers are used as a connection between the sub-sea wellheads and the vessel and the transportation of the risers is not incidental to the laying of a pipeline, the risers would be considered mer-

<sup>10</sup> “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”).

<sup>11</sup> Formerly 46 U.S.C. App. § 316(a). Recodified by Pub. L. 109–304, enacted on October 6, 2006.

<sup>12</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

chandise pursuant to T.D. 78-387, subparagraph (4). The multi-well template is production equipment and would likewise be considered merchandise, pursuant to T.D. 78-387, subparagraph (8). Because the transportation of the foregoing merchandise would be between to coastwise points, e.g. a U.S. shipyard and sub-sea wellheads, the transportation would have to be accomplished by a coastwise-qualified vessel. You assert that the movement of the subject vessel will be accomplished by coastwise-qualified tugboats and not the vessel itself. Although the towing of the vessel by coastwise-qualified tugboats would not be in violation of 46 U.S.C. § 55111, the transportation of the merchandise by the vessel would be in violation of 46 U.S.C. § 55102.

#### **HOLDING**

The transportation of the merchandise aboard the subject foreign-flagged vessel, from a U.S. point to subsea wellheads on the OCS, as described above, constitutes a violation of 46 U.S.C. § 55102. However, the towing of the foreign-flagged vessel by coastwise-qualified tugboats would not be in violation of 46 U.S.C. § 55111.

#### **EFFECT ON OTHER RULINGS**

HQ 111889, dated February 11, 1992, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT M]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061935  
VES-3-15 OT:RR:BSTC:CCI  
H061935 LLB  
Category: Carriers

MR. GEORGE H. ROBINSON, JR.  
LISKOW AND LEWIS, PLC  
822 Harding Street  
P.O. Box 52008  
Lafayette, Louisiana 70505-2008

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); modification of HQ 113841 (Feb. 28, 1997); T.D. 49815(4)(Mar. 13, 1939); T.D. 78-387 (Oct. 7, 1976); vessel equipment; merchandise.

DEAR MR. ROBINSON:

On February 28, 1997, Customs and Border Protection ("CBP") issued Headquarters Ruling Letter ("HQ") 113841 to you. In HQ 113841, as it relates to the first and second issues presented in that ruling, you proposed using a foreign-flagged cable-laying vessel to lay foreign-laded umbilical cable lines between a production manifold and fixed production platform on the Outer Continental Shelf (OCS) and to transport an Remotely Operated Vehicle (ROV) from a U.S. port to the OCS returning to the same U.S. port of lading. CBP held that the foregoing activity was not in violation of 46

U.S.C. § 55102<sup>13</sup> because the ROV and the umbilical lines would be considered equipment of the foreign-flagged vessel that was “essential to the mission of the vessel.” We have recently recognized that the foregoing holding and reasoning, based on the facts presented in HQ 113841, is contrary to T.D. 49815(4) (Mar. 13, 1939) and T.D. 78–387 (Oct. 7, 1976). Consequently, this ruling, HQ H061935, modifies HQ 113841 as to issues one and two and provides an analysis of the facts provided consistent with the foregoing rulings.

### FACTS

The following facts, as it relates to issues one and two in HQ 113841, are from your October 18, 1996, and February 17, 1997, letters. The subject foreign-flagged vessel (the “vessel”) was constructed specifically for the purpose of laying and repairing submarine cables. The vessel will lade umbilical cable at a foreign port and proceed to a port in Louisiana where it will lade an ROV. The vessel would then proceed to the Gulf of Mexico where it will use the ROV to assist with laying the foreign-laden cable between a production manifold and a fixed production platform. At the conclusion of the foregoing activities, the vessel would return to the port at which the ROV was laden and unlade the ROV and any remaining cable.

Under the foregoing scenario, CBP held in HQ 113841 that the coastwise movement of the vessel would not be in violation of 46 U.S.C. § 55102 reasoning the following:

The Customs Service has previously ruled (Ruling 112866, dated August 31, 1993) that the laying of cable is not considered coastwise trade. When cable is laid, its paid out in a continual operation while the vessel proceeds. Customs distinguishes between such an operation and the act of unlading merchandise since there is no single identifiable coastwise point involved in the laying of the cable.

. . . we find that both the umbilicals (including the spares) and the ROV are considered to be equipment of the foreign-flag umbilical laying vessel which are essential to the mission of the vessel. With respect to the umbilicals, even if they were regarded as merchandise the facts indicate that they will be placed aboard the vessel in a foreign port. This being the case there would be no transportation between coastwise points. In light of our determination that the named articles are considered equipment, the transportation proposed in the first two enumerated questions, above, may be accomplished with the use of a non-coastwise-qualified vessel.

As explained in the “Law and Analysis” section of this ruling, the foregoing holding and reasoning that the ROV and umbilical cable are vessel equipment because they are “essential to the mission of the vessel” is contrary to T.D. 78–387 and T.D. 49815(4).

### ISSUE

Whether the transportation and installation of the foreign-laden umbilical lines by the foreign-flag installing vessel, as described above, and the trans-

---

<sup>13</sup> Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109–304, enacted on October 6, 2006.



portation of the ROV by the same vessel from a U.S. port to the installation and returning to the same U.S. port would violate 46 U.S.C. § 55102.

#### LAW AND ANALYSIS

The coastwise laws prohibit the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline. See 33 C.F.R. § 2.22(a)(2)(2009). The laws of the United States, including the coastwise laws, are extended, under Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>14</sup> to:

. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any installation or other device (other than a ship or a vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; *see also* 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”). The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009)

However, not all transportation of merchandise is a coastwise transportation of merchandise. Although vessel equipment could be considered merchandise, e.g. a good, ware, or chattel, under 19 U.S.C. § 1401(c), CBP has held that vessel equipment is not merchandise within the meaning of 46 U.S.C. § 55102. See HQ 111892 (Sept. 16, 1991) and HQ 112479 (Jan. 6, 1993). The definition of vessel equipment CBP has used in its carrier rulings, has been based on T.D. 49815(4), which interprets § 309 of the Tariff

---

<sup>14</sup>67 Stat. 462; 43 U.S.C. § 1333(a).

Act of 1930<sup>15</sup> that provides for the duty free withdrawal of supplies and equipment for certain domestic vessels and aircraft.

The term “equipment”, as used in section 309, as amended, includes portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board. It does not comprehend consumable supplies either for the vessel and its appurtenances or for the passengers and the crew. The following articles, for example, have been held to constitute equipment: rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts.

#### **Umbilical Cable Lines**

You assert that the umbilical lines do not constitute merchandise under 46 U.S.C. § 55102 and “are considered to be in the nature of supplies necessary for the accomplishment of the mission of the vessel.” In HQ 113841, CBP considered the umbilical lines to be equipment of the vessel that is “essential to the completion of the mission of the vessel.” Neither principle is determinative as to whether an article is vessel equipment or supplies of the vessel. Pursuant to T.D. 49815(4), the term “supplies” includes:

articles commonly known as “sea stores”, that is, food, medicines, toiletries, and so forth, and in addition, all consumable articles *necessary and appropriate for the propulsion, operation and maintenance of the vessel*, such as coal, grease, gasoline, fuel oil, caulking cotton, putty, paint, waste, wiping rags, sandpaper, emery cloth, candles, polishes, cleansing compounds, and solvents.

(emphasis added). Notwithstanding the fact that the subject umbilical lines are not consumable articles, the umbilical lines are not necessary to propel, operate, or maintain the subject vessel. Therefore, the umbilical lines would not be considered supplies of the vessel. Moreover, the umbilical lines would not be considered vessel equipment. As stated above, vessel equipment “. . . includes portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board.” T.D. 49815(4). Insofar as the umbilical lines are not necessary to navigate, operate, or maintain the subject vessel, they would not be considered vessel equipment within the meaning of T.D. 49815(4). Accordingly, because the umbilical lines are not supplies or equipment of the vessel, they are considered merchandise.

In T.D. 78-387 (Oct. 7, 1976), the proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*, pipelaying. CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying operation which makes the operation permissible.” See T.D. 78-387 (Oct. 7, 1976), subparagraph (1). CBP has likewise held that cable is paid out during a cable-laying operation is not coastwise trade. HQ 112901 (Oct. 20, 1993); HQ 105648 (July 21, 1982).

---

<sup>15</sup> Codified at 19 U.S.C. § 1309.

In the present case, the cable-laying vessel would lade the umbilical cable at a foreign port, pay out that cable between a production manifold and a fixed production platform in the Gulf of Mexico, and unlade any of that remaining cable at a U.S. port. As stated above, pursuant to 19 C.F.R. § 4.80b(a), a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. Insofar as the umbilical cable will be laden at a foreign port and the paying out of the umbilical does not constitute an unlading of that merchandise, there will be no coastwise transportation of merchandise within the meaning of 19 C.F.R. § 4.80b(a). To the extent the remainder of that foreign-laden cable will be unladen at U.S. port, there will be not a coastwise transportation of merchandise within the meaning of 19 C.F.R. § 4.80b(a), because while the merchandise will be unladen at a U.S. point, the merchandise will not be laden at a point embraced by the coastwise law, e.g. a foreign port.

#### **ROV**

With regard to the ROV, you assert that it is “necessary equipment for the installation of the umbilicals.” In HQ 113841, CBP considered the ROV as equipment of the vessel that is “essential to the completion of the mission of the vessel.” Treasury Decision 49815(4), in defining vessel equipment, does not contemplate whether such equipment is necessary for the activity in which the vessel will be engaged or “essential to the completion of the mission of the vessel.” Rather, the equipment must be necessary to navigate, operate, or maintain the vessel or for the safety and comfort of the persons aboard. T.D. 49815(4). Nevertheless, we conclude the ROV is vessel equipment. In order for the vessel to operate as a cable-laying vessel, e.g. the operation for which it was designed, an ROV is necessary to monitor the placement of the cable being laid by the vessel.

#### **HOLDING**

Insofar as the merchandise, e.g. umbilical lines, will be laden in a foreign port and the remnants of which will be unladen at a U.S. point, the transportation of such merchandise would not be in violation of 46 U.S.C. § 55102 and 19 C.F.R. § 4.80b(a). Because the ROV is vessel equipment within the meaning of T.D. 49815(4), and not merchandise, its transportation between coastwise points would not be in violation of 46 U.S.C. § 55102 and 19 C.F.R. § 4.80b(a).

#### **EFFECT ON OTHER RULINGS**

HQ 113841, dated February 28, 1997, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT N]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061992  
VES-3-15 OT:RR:BSTC:CCI H061992 LLB  
Category: Carriers

J. KELLY DUNCAN, ESQ.  
JONES WALKER  
201 St. Charles Ave.  
New Orleans, Louisiana 70170-5100

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); modification of HQ 115938 (Apr. 1, 2003); T.D. 49815(4)(Mar. 13, 1939); T.D. 78-387 (Oct. 7, 1976); vessel equipment; merchandise.

DEAR MR. DUNCAN:

On April 1, 2003, Customs and Border Protection (“CBP”) issued Headquarters Ruling Letter (“HQ”) 115938 to you. In HQ 115938, you proposed using a non-coastwise qualified liftboat to, *inter alia*, transport, for the purpose of installation, compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components, from a U.S. port to wells and platforms on the Outer Continental Shelf (OCS). CBP held that the foregoing articles were not merchandise because the “articles [are] necessary to carry out the vessel’s functions” and “constitute equipment that is fundamental to the mission of the vessel.” Accordingly, CBP held that the transportation of the foregoing articles was not in violation of 46 U.S.C. § 55102.<sup>16</sup> We have recently recognized that the foregoing holding and reasoning, based on the facts presented in HQ 115938, is contrary to T.D. 49815(4) (Mar. 13, 1939) and T.D. 78-387 (Oct. 7, 1976). Consequently, this ruling, HQ H061992, modifies HQ 115938 as to the determination that the foregoing articles are not merchandise and provides an analysis of the facts provided consistent with the foregoing rulings.

**FACTS**

The following facts, as it relates to the determination of whether the subject articles and its transportation and installation, violate 46 U.S.C. § 55102 are from HQ 115938. [] liftboats are U.S. documented self-propelled, non-coastwise qualified, self-elevating work platforms with legs, cranes and living accommodations. When furnishing well services, the liftboats serve as work platforms, equipment staging areas and crew quarters for liftboat personnel engaged in oil and gas well drilling, completion, intervention, construction, maintenance and repair services. The liftboats perform work for and alongside offshore oil or gas platforms. The liftboats also provide services necessary to produce and maintain offshore wells as well as plug and abandonment services at the end of their life cycle. The larger, multipurpose liftboats also are used in well-intervention and perform heavy lifts, support pipeline tie-ins and other construction related projects.

---

<sup>16</sup>Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.

Services furnished by the liftboats include the installation of compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components by the personnel and technicians aboard the liftboats as part of the construction and maintenance operations performed by the liftboats. Other services furnished from the liftboats include fishing for tools, thru-tubing services, logging, multilaterals, milling and cutting, cementing operations, casing patch, wellhead services, completions, coiled tubing, pumping and stimulation, blowout control, snubbing, recompletion, pipeline services (including cleaning, commissioning, testing, flooding and dewatering), well workover, nitrogen jetting, welding, offshore construction, engineering and well and reservoir evaluation services.

These services are furnished in connection with oil and natural gas wells, and platforms on the OCS and shallow waters of the Gulf of Mexico and, from time to time, in internal waters and bays of the United States. The personnel transported on board these liftboats would be involved in the furnishing of these services and would be crew employed by [ ].

With respect to the liftboats equipped with cranes, such cranes are used for lifting and moving equipment to and from a customer's platform or wellhead in connection with construction, maintenance and other services furnished by the liftboats. You indicate that the liftboats are stationary, with their legs imbedded in the seabed, during any lifting or setting operation. Accordingly, any movement of cargo lifted by a liftboat crane is effected exclusively by the operation of the crane and not by movement of the liftboat. You note that the only persons and goods transported on the liftboats would be personnel, third party technicians and equipment and materials utilized in the furnishing of the services of the liftboats.

You further state that at no time would such personnel, technicians or equipments or materials be moved from one coastwise point to another where they would be discharged except for such personnel, third party technicians and equipment and materials utilized in performing the services from which the liftboat has been engaged. You indicate that the only time that any persons might permanently disembark from a liftboat that is servicing an offshore platform and board the platform is in the event of safety considerations, such as work schedules requiring crew changes, personal health reasons or significant inclement weather, i.e. a hurricane that threatens the seaworthiness of the liftboat and well-being of those aboard. You go on to note that in such an event, such persons will return to a U.S. port by means of coastwise - qualified vessels or helicopters. Thus, there would be no carriage or discharge of any goods, equipment or personnel, other than such as are necessary to the mission, operation and/or navigation of the liftboats.

You further indicate that the subject liftboats will sometimes be time-chartered to customers but will always be operated and crewed by [ ]'s personnel. You state that the liftboats may leave from a U.S. port and travel to one or more coastwise points, carrying its equipment, personnel, third party technicians and one or more representatives from the customer for whom [ ] is performing services and, upon completion of the services, the liftboat will return with its equipment, personnel, technicians and the customer's representatives to a U.S. port. You indicate that on other occasions, the liftboat may travel to another platform to perform services for the same or another

customer, but that in no event would any person permanently disembark from the vessel at the offshore site except for safety and health reasons as discussed above.

Under the foregoing scenario, CBP held in HQ 115938 that the coastwise movement of the vessel would not be in violation of 46 U.S.C. § 55102 reasoning that “[t]he articles necessary to carry out the vessel functions described above, constitute equipment that is fundamental to the vessel’s operation and is not “merchandise” for purposes of 46 U.S.C. App. § 883.” As explained in the “Law and Analysis” section of this ruling, the foregoing holding and reasoning is contrary to T.D. 78–387 and T.D. 49815(4).

#### ISSUE

Whether the transportation, for the purpose of installation, of compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment, and pre-fabricated structural components, from a U.S. port to wells and platforms on the OCS, as described above, would violate 46 U.S.C. § 55102.

#### LAW AND ANALYSIS

The coastwise laws prohibit the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline. See 33 C.F.R. § 2.22(a)(2)(2009). The laws of the United States, including the coastwise laws, are extended, under Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>17</sup> to:

. . . the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any installation or other device (other than a ship or a vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c)(stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohib-

<sup>17</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

ited . . .” The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009)

However, not all transportation of merchandise is a coastwise transportation of merchandise. CBP has held that vessel equipment is not merchandise within the meaning of 46 U.S.C. § 55102. See HQ 111892 (Sept. 16, 1991) and HQ 112479 (Jan. 6, 1993). The definition of vessel equipment CBP that has used in its carrier rulings, has been based on T.D. 49815(4), which interprets § 309 of the Tariff Act of 1930<sup>18</sup> which provides for the duty free withdrawal of supplies and equipment for certain domestic vessels and aircraft.

The term “equipment”, as used in section 309, as amended, includes portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board. It does not comprehend consumable supplies either for the vessel and its appurtenances or for the passengers and the crew. The following articles, for example, have been held to constitute equipment: rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts.

In HQ 115938, CBP considered compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components to be equipment of the vessel reasoning that “[t]he articles [are] necessary to carry out the vessel functions described above, [and] constitute equipment that is fundamental to the vessel’s operation essential to the completion of the mission of the vessel.” Neither principle is determinative as to whether an article is vessel equipment. As stated above, vessel equipment “. . . includes portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board.” T.D. 49815(4). Treasury Decision 49815(4) does not contemplate the activity or “mission” in which the vessel will be engaged; rather, it contemplates the articles that are needed to navigate, operate, or maintain the vessel *itself*. Insofar as compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components are not necessary to navigate, operate, or maintain a liftboat, they would not be considered vessel equipment within the meaning of T.D. 49815(4).

In addition, the transportation of the foregoing articles would be contrary to T.D. 78–387. In T.D. 78–387, the proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*: repairing pipe and underwater portions of a drilling platform; transportation of pipeline repair materials; installation and transportation of pipeline connectors and wellheads; and the transportation of machinery and production equipment.

---

<sup>18</sup> Codified at 19 U.S.C. § 1309.

CBP held that repairing pipe is not a use in the coastwise trade and therefore, the transportation of pipe and repair materials was not an activity that would be prohibited by the coastwise laws. See T.D. 78-387, subparagraph (2). With regard to the repair of offshore or subsea structures, CBP also held the use of such vessel was not a use in the coastwise trade; therefore, the transportation by that vessel of such “materials and tools *as are necessary for the accomplishment of the mission of the vessel* (i.e., materials to be expended during the course of the underwater inspection and repair operations and tools necessary in such operations)” *provided that* the installation of the repair materials on to the underwater portions of the structure is a) unforeseen b) the repair material or component to be installed is of de minimis value, and c) such materials are “usually carried aboard the vessel as supplies.” See *id.* at subparagraph (6) (emphasis and lettering added). If the installation of the repair materials is foreseen and more than de minimis value (e.g. a structural member), the transportation of such materials must be made by a coastwise-qualified vessel. *Id.* The ruling distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would have to be accomplished by a coastwise-qualified vessel. *Id.* (emphasis added). CBP emphasized that the foregoing repair work had to be done “*on or from*” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.* Further, CBP held that transportation of machinery or production equipment to an offshore production platform would be deemed a use in the coastwise trade and would therefore have to be accomplished by a coastwise-qualified vessel. See *id.* at subparagraph (8).

Here, it is asserted that part of the services provided by the liftboat will be the “installation” of the subject articles. With regard to the transportation of the compressors, generators, pumps and other oilfield equipment by the non-coastwise qualified lift boat, that activity would be prohibited by T.D. 78-387, subparagraph (10), which holds that that transportation of machinery or production equipment to a coastwise point would be deemed a use in the coastwise trade and would therefore have to be accomplished by a coastwise-qualified vessel. With regard to the remaining articles, T.D. 78-387, subparagraph (6) holds that articles to be installed at a coastwise point are considered merchandise unless they are considered repair materials which would be installed due to an a) unforeseen repair; b) is of de minimis value; and c) “usually carried aboard the vessel as supplies.” Subparagraph (6) specifically states as an example that structural members are more than de minimis value. Accordingly, the fabricated structural components would have to be transported by a coastwise-qualified vessel. With regard to the remaining articles, without any evidence that the subject articles are repair materials under T.D. 78-387, subparagraph (6), we conclude they are merchandise under T.D. 78-387, subparagraph (6).

In conclusion, because the articles described in the “FACTS” section above are merchandise, their transportation from U.S. ports to coastwise points on the OCS, would be coastwise transportation of merchandise pursuant to 19 C.F.R. § 4.80b(a) and therefore; be in violation of 46 U.S.C. § 55102.



**HOLDING**

The transportation, for the purpose of installation, of compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components, from a U.S. port to wells and platforms on the OCS, as described above, would violate 46 U.S.C. § 55102 .

**EFFECT ON OTHER RULINGS**

HQ 115938, dated April 1, 2003, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT O]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061993  
VES-3-15 OT:RRBSTC:CCI H061993 LLB  
Category: Carriers

JEANNE M. GRASSO, ESQUIRE  
BLANK ROME LLP  
*Watergate*  
*600 New Hampshire Avenue, NW*  
*Washington, O.C. 20037*

RE: Coastwise transportation; 46 U.S.C. §§ 55102; 19 C.F.R. § 4.80b(a); modification of HQ H029417 (June 5,2008); TO. 49815(4)(Mar. 13,1939); TO. 78-387 (Oct. 7, 1976); vessel equipment; merchandise.

DEAR MR. GRASSO:

On June 5, 2008, Customs and Border Protection (“CBP”) issued Headquarters Ruling Letter (“HQ”) H029417 to you. In HQ H029417, as it relates to the second issue presented, you proposed using a coastwise-qualified tugboat to tow a non-coastwise qualified deck barge with an exhibit hall structure aboard. CBP held that the exhibit hall structure was vessel equipment and not merchandise because it “is integral to the operation of the vessel as an exhibit hall.” Accordingly, CBP held that the transportation of the exhibit hall structure was not in violation of 46 U.S.C. § 55102. <sup>1</sup>We have recently recognized that the foregoing holding and reasoning, based on the facts presented in HQ H029417 is contrary to T.D.49815(4) (Mar. 13, 1939). Consequently, this ruling, HQ H061993 modifies HQ H029417 as to the determination that the exhibit hall structure is not merchandise and provides an analysis of the facts provided consistent with the T.D. 49815(4).

<sup>1</sup> Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6,2006.

**FACTS**

The following facts, as it relates to the determination of whether the exhibit hall structure is merchandise, are from HQ H029417. The Hannah Marine Company (the “Company”) is chartering a coastwise-qualified tug and a non-coastwise-qualified deck barge to a charterer that will use the barge as

a floating exhibit hall. In order to facilitate its use as an exhibit hall, the barge will first be modified in the U.S. by adding customized shipping containers that will either be bolted or welded to the deck. Then the floating exhibit hall will be towed by a coastwise-qualified tug to various U.S. and Canadian ports. The barge will be carrying products and equipment used for demonstration/exhibition purposes and will not carry any passengers during its voyages. Any staff of the exhibit hall will travel over land or by air to each port, or aboard the coastwise-qualified tug.

Upon completion of the charter, the exhibit hall structure will be removed from the barge in the U.S. but the removal may occur at a location different from the location where the barge was modified. As for the products and equipment that will be used for demonstration/exhibition purposes, these items will either be unladen at the same coastwise point at which they were laden or, if they will be unladen at a different coastwise point than which they were laden, they will be transported aboard the coastwise-qualified tug during all voyages.

Under the foregoing scenario, CBP held in HQ H029417, that the exhibit hall structure was vessel equipment rather than merchandise reasoning that "is integral to the operation of the vessel as an exhibit hall." As explained in the "Law and Analysis" section of this ruling, the foregoing holding and reasoning is contrary to T.D. 49815(4).

#### **ISSUE**

Whether the exhibit hall structure is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c).

#### **LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be "coastwise qualified." The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the "Jones Act", provides in pertinent part, that the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. "[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material." 46 U.S.C. § 55102(a), et seq.; see also 19 U.S.C. § 1401(c) (stating that "[t]he word 'merchandise' means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . ." The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws

(“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009)

However, not all transportation of merchandise is a coastwise transportation of merchandise. CBP has held that vessel equipment is not merchandise within the meaning of 46 U.S.C. § 55102. See HQ 111892 (Sept. 16, 1991) and HQ 112479 (Jan. 6, 1993). The definition of vessel equipment CBP that has used in its carrier rulings, is based on T.O. 49815(4), which interprets § 309 of the Tariff Act of 1930<sup>2</sup> which provides for the duty free withdrawal of supplies and equipment for certain domestic vessels and aircraft.

The term “equipment”, as used in section 309, as amended, includes portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board. It does not comprehend consumable supplies either for the vessel and its appurtenances or for the passengers and the crew. The following articles, for example, have been held to constitute equipment: rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts.

In HQ H029417, CBP determined that the exhibit hall structure was integral to the vessel’s operation as an exhibit hall. Treasury Decision 49815(4) does not contemplate the activity or “mission” in which the vessel will be engaged; rather, it contemplates the articles that are needed to navigate, operate, or maintain the vessel *itself*. In HQ 115356 (May 22, 2001), a non-coastwise qualified power barge was outfitted with electrical generating equipment at one U.S. port and subsequently, the generating equipment was unladen at a different U.S. port. CBP held that the generating equipment was vessel equipment reasoning, in part, that the equipment was integral to the operation of the vessel as a power barge.

We distinguish the facts of HQ 115356 from the present case. Here, an exhibit hall structure is not needed to navigate, operate, or maintain a deck barge whereas as in HQ 115356, generating equipment would be necessary to operate a power barge. Accordingly, the exhibit hall structure would not be considered vessel equipment within the meaning of T.O. 49815(4) and would be considered merchandise within the meaning of § 55102. Therefore, the transportation of the exhibit hall structure aboard the deck barge between two different coastwise points would violate 46 U.S.C. § 55102. ●

<sup>2</sup> Codified at 19 U.S.C. § 1309. 4

#### **HOLDING**

The exhibit hall structure is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c); accordingly, its transportation aboard a non-coastwise qualified deck barge between two different coastwise points would be in violation of 46 U.S.C. § 55102.

#### **EFFECT ON OTHER RULINGS**

HQ H029417, dated June 5, 2008, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT P]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061994  
VES-3-15 OT:RR:BSTC:CCI H061994 LLB  
Category: Carriers

MR. MARION E. MCDANIEL, JR.  
LOCKE LORD BISSELL & LIDDELL LLP  
3400 JP Morgan Chase Tower, 600 Travis  
Houston, Texas 77002

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a);  
modification of HQ H032757 (July 28, 2008); T.D. 49815(4)(Mar. 13,  
1939); vessel equipment; merchandise.

DEAR MR. MCDANIEL:

On July 28, 2008, Customs and Border Protection (“CBP”) issued Headquarters Ruling Letter (“HQ”) H032757 to you. In HQ H032757, as it relates to the second issue presented, you proposed using a coastwise-qualified tugboat to tow a non-coastwise qualified deck barge with an exhibit hall structure aboard. CBP held that the exhibit hall structure was vessel equipment and not merchandise because it “is integral to the operation of the vessel as an exhibit hall.” Accordingly, CBP held that the transportation of the exhibit hall structure was not in violation of 46 U.S.C. § 55102.<sup>19</sup> We have recently recognized that the foregoing holding and reasoning, based on the facts presented in HQ H032757 is contrary to T.D. 49815(4) (Mar. 13, 1939). Consequently, this ruling, HQ H061994 modifies HQ H032757 as to the determination that the exhibit hall structure is not merchandise and provides an analysis of the facts provided consistent with the T.D. 49815(4).

**FACTS**

The following facts, as it relates to the determination of whether the exhibit hall structure is merchandise, are from HQ H032757. The Oliver Schrott Kommunikation Company (the “Company”) was hired to design and construct a mobile exhibition center upon a chartered non-coastwise-qualified deck barge, formerly a tank barge, which will be used as a floating exhibit hall. In order to facilitate its use as an exhibit hall, the barge will first be modified in the U.S. by adding approximately 50 customized shipping containers that will be secured in several levels to each other and to the barge so as to provide some 10,000 square feet of exhibition space. A specially designed “platform” is being affixed to the barge’s upper deck where it will remain until the charter is terminated. The customized shipping containers which comprise the exhibit hall will be secured to the platform (and in turn to the barge) by “twist locks.” The arrangement will stay in place throughout the charter until termination whereupon the platform and exhibit hall will be removed.

The purpose of the exhibit hall barge will serve as center in which Siemens will conduct trade shows and multi-media presentations of its various products for its present and/or potential customers at different U.S. and

---

<sup>19</sup> Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.

Canadian ports. The exhibit hall will contain Siemens products and equipment used solely for demonstration purposes. The barge will not carry any passengers during its voyages between ports. Any staff for the exhibit hall will not travel on the barge between ports. The floating exhibit hall will be towed by a coastwise-qualified tug to various U.S. and Canadian ports. Upon completion of the charter, the exhibit hall structure will be removed from the barge in the U.S. but the removal may occur at a location different from the location where the barge was modified.

Under the foregoing scenario, CBP held in HQ H032757, that the exhibit hall structure was vessel equipment rather than merchandise reasoning that “is integral to the operation of the vessel as an exhibit hall.” As explained in the “Law and Analysis” section of this ruling, the foregoing holding and reasoning is contrary to T.D. 49815(4).

#### **ISSUE**

Whether the exhibit hall structure is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c).

#### **LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”). The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009)

However, not all transportation of merchandise is a coastwise transportation of merchandise. CBP has held that vessel equipment is not merchandise within the meaning of 46 U.S.C. § 55102. See HQ 111892 (Sept. 16, 1991) and HQ 112479 (Jan. 6, 1993). The definition of vessel equipment CBP that has used in its carrier rulings, is based on T.D. 49815(4), which interprets

§ 309 of the Tariff Act of 1930<sup>20</sup> which provides for the duty free withdrawal of supplies and equipment for certain domestic vessels and aircraft.

The term “equipment”, as used in section 309, as amended, includes portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board. It does not comprehend consumable supplies either for the vessel and its appurtenances or for the passengers and the crew. The following articles, for example, have been held to constitute equipment: rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts.

In HQ H032757, CBP determined that the exhibit hall structure was integral to the vessel’s operation as an exhibit hall. Treasury Decision 49815(4) does not contemplate the activity or “mission” in which the vessel will be engaged; rather, it contemplates the articles that are needed to navigate, operate, or maintain the vessel *itself*. In HQ 115356 (May 22, 2001), a non-coastwise qualified power barge was outfitted with electrical generating equipment at one U.S. port and subsequently, the generating equipment was unladen at a different U.S. port. CBP held that the generating equipment was vessel equipment reasoning, in part, that the equipment was integral to the operation of the vessel as a power barge.

We distinguish the facts of HQ 115356 from the present case. Here, an exhibit hall structure is not needed to navigate, operate, or maintain a deck barge whereas in HQ 115356, generating equipment would be necessary to operate a power barge. Accordingly, the exhibit hall structure would not be considered vessel equipment within the meaning of T.D. 49815(4) and would be considered merchandise within the meaning of § 55102. Therefore, the transportation of the exhibit hall structure aboard the deck barge between two different coastwise points would violate 46 U.S.C. § 55102.

#### **HOLDING**

The exhibit hall structure is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c); accordingly, its transportation aboard a non-coastwise qualified deck barge between two different coastwise points would be in violation of 46 U.S.C. § 55102.

#### **EFFECT ON OTHER RULINGS**

HQ H032757, dated July 28, 2008, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

---

<sup>20</sup> Codified at 19 U.S.C. § 1309.

**PROPOSED MODIFICATION OF RULING LETTER AND  
PROPOSED MODIFICATION OF TREATMENT RELATING  
TO THE TARIFF CLASSIFICATION OF SPORTS GLOVES**

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

**ACTION:** Notice of proposed modification of three ruling letters and proposed revocation of treatment relating to tariff classification of sports gloves.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify three ruling letters relating to the tariff classification of sports gloves 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.

**DATE:** Comments must be received on or before August 16, 2009.

**ADDRESS:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0025

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to modify three ruling letters pertaining to the tariff classification of sports gloves imported by Black Diamond, Inc. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letters 4042400, NY N042401 and N042402, dated November 14, 2008 (Attachments A-C), 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 N042400, NY N042401 and N042402, CBP determined that the subject gloves of styles Stormweight (Style # 801060), Legend (Style # 801605, 801610), Fever (Style # 801564, 801566), Prodigy (Style # 801551, 801555), Guide (Style # 801511, 801512), Squad (Style # 801576, 801578), Renegade (801431, 801436), and Glissade (Style # 801725) were classified as follows:

Styles #801551, #801555, #801511 and #801512 were classified in subheading 4203.21.8060, HTSUS, which provides for "articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: specially designed for use in sports: other . . . other."

Styles #801564, #801724, #801605, #801576, #801431 were classified in subheading 4203.29.3020, HTSUS, which provides for "ar-



ticles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: men's . . . lined.”

Style #801060 was classified in subheading 4203.29.40, HTSUS, as “articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: for other persons: not lined”

Styles #801566, #801610, #801578, #801436 and #801725 were classified in subheading 4203.29.5000, HTSUS, which provides for “articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: for other persons: lined.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N042400, NY N042401 and N042402 with respect to the subject styles and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject gloves according to the analysis contained in proposed Headquarters Ruling Letter H055387, set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

**DATED:** June 18, 2009

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
NY N042400  
November 14, 2008  
CLA-2-61:OT:RR:NC:TAB:354  
CATEGORY: Classification  
TARIFF NO.: 3926.20.3000, 4203.21.8060,  
4203.29.4000, 6116.91.0000, 6116.93.0800, 6116.93.9400

MS. ZOE GREYE  
BLACK DIAMOND EQUIPMENT, LTD.  
2084 East 3900 South  
Salt Lake City, UT 84124

RE: The tariff classification of gloves from China.

DEAR MS. GREYE:

In your letter dated October 17, 2008 you requested a classification ruling. Style Torque #801665, is a pair of unisex form-fitting ice-climbing gloves with a complete palmside from the fingertips to the wrist made of a textile fabric that has been completely coated on both sides with PVC plastic, which also overlaps four fingertips. The remainder of the outer shell, including the fourchettes, backside, and finger sidewalls, is made of woven nylon fabric. Other features include a hook and loop fastener on the backside wrist and irregular shaped inner molded foam padding placed over three of the backside fingers and on a portion of the backside knuckles and pre-curved finger construction. The wrist portion of the palmside is made of neoprene sandwiched between two knitted fabrics. The essential character of the glove is imparted by the plastics palmside material. The gloves are designed for use in the sport of ice-climbing. Style Stormweight #801060, is described as a pair of unisex gloves/liners that are designed for runners, hikers and backcountry skiers. The gloves are made up of 100% polyester knit fabric that features a breathable windstopper membrane on the inner surface which is sandwiched between a finely knit polyester fabric on the inner surface and a brushed polyester fabric on the outer surface of the glove. A goatskin leather overlay makes up the palmside, from fingertips to wrist, also overlapping the fingertips and thumb tip. Other features include a partially elasticized wrist, a hook and clasp, and fourchettes. The essential character of the glove is imparted by the leather palmside material.

Style Pilot #801730 is a pair of unisex form-fitting mountaineering gloves. The gloves are made up of a complete palmside, from fingertips to wrist, constructed of goatskin leather with Kevlar stitching, which also overlaps the fingertips and thumb tip, and makes up the sidewall of the thumb and forefinger. The wrist portion of the palmside is made of neoprene sandwiched between two knitted fabrics. The remainder of the glove, including the backside and fourchettes, is made up of 100% woven nylon fabric. A hook and loop fastener is located on the backside wrist. The essential character of the glove is imparted by the leather palmside material. The gloves are designed for use in the sport of mountaineering.

Style Pursuit #801682 is described as a pair of unisex mountaineering gloves that also feature removable inner gloves. The outer gloves are made up of an outer shell composed of a laminated fabric made of 78% nylon, 15%

polyurethane and 7% spandex woven fabric that has been laminated to a knit pile fabric on the underside made of mostly polyester. A goatskin suede leather palm patch is located across the center of the palm and covers a portion of the base of the index finger and thumb, and overlaps the leather sidewalls of the thumb and index finger. A small portion of the backside ring and pinky finger, and the backside thumb tip, is also made of leather. The form-fitting gloves feature an extended gauntlet cuff, an elasticized adjustable draw cord on the bottom edge of the extended gauntlet cuff, a partially elasticized wrist, fourchettes, and pre-curved finger construction. The outer gloves are designed for use in the sport of mountaineering and the essential character is imparted by the textile outer shell fabric. Following Chapter 60, Note 1(c), the fabric of the outer gloves of style Pursuit is not considered a fabric of heading 5903, 5906, or 5907 because the inner layer of the fabric lamination is of knit pile construction. Consequently, the applicable subheading for the gloves will be in heading 6116, HTSUS. You state that the removable inner gloves are made of knit merino wool and feature a brushed inner surface, fourchettes and sidewalls, a hook and clasp and a rib knit cuff.

Style Windweight #801062 (men's) and #801063 (women's) is a cold weather glove/liner made up of a 100% knit polyester fleece outer shell. A goatskin suede leather palm patch is located across the center of the palm and covers a portion of the base of the index finger and thumb. The tip of the palmside thumb, index and middle fingers feature a small silicon dotted overlay. Other features include a partially elasticized wrist, knit polyester fleece fourchettes and sidewalls, and a hook and clasp. The essential character of the glove is imparted by the knit polyester fabric.

The applicable subheading for style Torque #801665 will be 3926.20.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics and articles of other materials of headings 3901 to 3914: articles of apparel and clothing accessories (including gloves): gloves: other: specially designed for use in sports: other. The duty rate will be 3% ad valorem.

The applicable subheading for style Stormweight #801060 will be 4203.29.4000, HTSUS, which provides for articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: for other persons: not lined. The duty rate will be 12.6% ad valorem.

The applicable subheading for style Pilot #801730 will be 4203.21.8060, HTSUS, which provides for articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: specially designed for use in sports: other . . . other. The duty rate will be 4.9% ad valorem.

The applicable subheading for the outer gloves of style Pursuit #801682 will be 6116.93.0800, HTSUS, which provides for gloves, mittens and mitts, knitted or crocheted: other: of synthetic fibers: other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts. The duty rate will be 2.8% ad valorem. The applicable subheading for the removable inner gloves of style Pursuit #801682 will be 6116.91.0000, which provides for gloves, mittens and mitts, knitted or crocheted: other: of wool or fine animal hair. The duty rate will be 31.2 cents per kilogram plus 7% ad valorem.

The applicable subheading for style Windweight #801062 (men's) and #801063 (women's) will be 6116.93.9400, HTSUS, which provides for gloves, mittens and mitts, knitted or crocheted: other: of synthetic fibers: other: other: with fouchettes. The duty rate will be 18.6% 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

Style Windweight #801062 (men's) and #801063 (women's) falls within textile category 631, and the inner gloves of style Pursuit #801682 fall within textile category 431. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Deborah Marinucci at (646) 733-3054.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
N042401  
November 14, 2008  
CLA-2-42:OT:RR:NC:TAB:354  
CATEGORY: Classification  
TARIFF NO.: 4203.21.8060, 4203.29.3020, 4203.29.5000

MS. ZOE GREYE  
BLACK DIAMOND EQUIPMENT, LTD.  
2084 East 3900 South  
Salt Lake City, UT 84124

RE: The tariff classification of gloves from China.

DEAR MS. GREYE:

In your letter dated October 17, 2008 you requested a classification ruling. Style Fever #801564 (men's) and #801566 (women's) is a lined and insulated cold weather glove made with a palmside, from fingertips to wrist,

composed of over 90% goatskin leather, which also overlaps four fingertips, the base of the backside knuckles, and a strip of leather is also sewn across the lower part of the backside. A goatskin leather palm overlay is also sewn across the palmside. The backside thumb is made of a flocked PU fabric which serves as a nose wipe. The remainder of the outer shell, which includes a small portion of the bottom of the palmside at the wrist, the backside, fourchettes, sidewalls and extended gauntlet cuff, is made up of a woven fabric that has been laminated to a knit pile fabric on the underside. The gloves also feature an elasticized wrist, a hook and clasp, an inner waterproof barrier, and a ribbed knit cuff extending beyond the gauntlet bottom. In addition, the backside contains a zippered pocket into which a heat pack is inserted for extra warmth. The essential character of the glove is imparted by the leather palm.

Style Prodigy #801551 (men's) and #801555 (women's) is a pair of mountaineering gloves that also feature removable inner gloves. The gloves feature a palm side, from fingertips to wrist, and a complete index finger, made up of over 90% goatskin leather, which also extends across the backside knuckles and makes up the sidewalls of the thumb and index finger. A goatskin leather palm overlay is also sewn across the palmside. Leather inserts also make up three of the backside fingertips, the backside finger knuckles, and the base of the backside thumb. The remainder of the outer shell, which includes a small portion of the palm side at the wrist, fourchettes, backside and extended gauntlet, are made up of a coated woven textile fabric. The outer gloves also feature an elasticized wrist, a drawstring tightener sewn into the gauntlet hem, and a backside thumb made up of a flocked PU fabric which serves as a nose wipe. The gloves are designed for use in the sport of mountaineering. The essential character of the glove is imparted by the leather palm. The glove has a dedicated glove liner made of a coated woven fabric. The dedicated liners are lined and insulated and are attached to the outer gloves by means of hook and loop fabric. The dedicated glove liners also feature fourchettes and a pull tab sewn to the outer edge of the cuff that enables the gloves to be pulled out easier.

Style Legend #801605 (men's) and #801610 (women's) is a lined and insulated cold weather glove made with a palm side, from fingertips to wrist composed of goatskin leather. Goatskin leather also makes up the majority of the backside and sidewalls. The remainder of the glove, which includes a portion of the fourchettes, the bottom portion of the backside, and the cuff, are made of a coated woven fabric. The backside thumb is made of a flocked PU fabric which serves as a nose wipe. Other features include a hook and loop fastener at the cuff, a hook and clasp, and irregular shaped molded foam padding placed over two of the backside fingers and across the backside knuckles. The essential character of the glove is imparted by the leather palm.

Style Guide #801511 (men's) and #801512 (women's) is a pair of mountaineering gloves that also feature removable inner gloves. The gloves are made of a palm side, from fingertips to wrist, made up of over 90% goatskin leather, which also extends to form the sidewalls and overlaps four fingertips. A goatskin leather palm patch is also sewn across the palmside. The backside thumb is made of a flocked PU fabric which serves as a nose wipe. The remainder of the glove, which includes a small portion of the bottom of the palmside at the wrist, the backside, fourchettes, and extended gauntlet cuff, are made up of a coated woven fabric. A leather goatskin overlay is also

sewn across the backside knuckles, a portion of which also features an irregular shaped molded foam padding. Additional features include an elasticized wrist and a drawstring tightener sewn into the gauntlet hem. The gloves are designed for use in the sport of mountaineering. The essential character of the glove is imparted by the leather palm. The glove has a dedicated glove liner made of a coated woven fabric. The dedicated liners are lined and insulated and are attached to the outer glove by means of hook and loop fabric. The dedicated glove liners also feature fourchettes, a knit berber lining, and a pull tab sewn to the outer edge of the cuff that enables the gloves to be pulled out easier.

Style Absolute Mitt #801680 is a pair of lined and insulated high altitude mountaineering unisex mittens that also feature removable inner mittens. The outer mitten is made up of a palm side, from fingertips to wrist, of goatskin leather with Kevlar stitching. Goatskin leather also overlaps the top of the mitten and makes up the sidewalls. The remainder of the mitten is made up of woven nylon fabric that features a breathable windstopper membrane on the inner surface. Other features include an inner waterproof barrier, an adjustable textile strap on the backside wrist, an extended gauntlet cuff with a drawstring tightener sewn into the gauntlet hem. The mittens are designed for use in the sport of mountaineering. The essential character of the mitten is imparted by the leather palmside. The mitten has a dedicated mitten liner made of a woven nylon fabric that also features a breathable windstopper membrane on the inner surface. The dedicated mitten liners are lined and insulated and are attached to the outer glove by means of hook and loop fabric. The dedicated mitten liners also feature a separate index finger, sidewalls, a backside thumb made up of a flocked PU fabric which serves as a nose wipe, and a non-knit fabric overlay at the top portion of the palmside and at the palmside thumb.

The applicable subheading for styles Prodigy #801551 (men's) and #801555 (women's), Guide #801511 (men's) and #801512 (women's), and Absolute Mitt #801680 will be 4203.21.8060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: specially designed for use in sports: other . . . other. The duty rate will be 4.9% ad valorem.

The applicable subheading for style Fever #801564 (men's) and Legend #801605 (men's) will be 4203.29.3020, HTSUS, which provides for articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: men's . . . lined. The duty rate will be 14% ad valorem.

The applicable subheading for style Fever #801566 (women's) and Legend #801610 (women's) will be 4203.29.5000, HTSUS, which provides for articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: for other persons . . . lined. The duty rate will be 12.6% 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 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 im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Deborah Marinucci at (646) 733-3054.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
N042402  
November 14, 2008  
CLA-2-42:OT:RR:NC:TAB:354  
CATEGORY: Classification  
TARIFF NO.: 4203.21.8060, 4203.29.3020, 4203.29.5000

MS. ZOE GREYE  
BLACK DIAMOND EQUIPMENT, LTD.  
*2084 East 3900 South*  
*Salt Lake City, UT 84124*

RE: The tariff classification of gloves from China.

DEAR MS. GREYE:

In your letter dated October 17, 2008 you requested a classification ruling. Style Enforcer #801640 is a pair of unisex ice-climbing gloves that also feature removable inner gloves. The outer gloves are made of a palm side, from fingertips to wrist, composed of over 90% goatskin leather, which also forms the sidewalls of the thumb and forefinger, and overlaps the fingertips and thumb tip. A second goatskin leather palm overlay is sewn across the palm using Kevlar stitching and also overlaps the sidewalls. The remainder of the outer shell, which includes a small portion of the bottom of the palm side at the wrist, the backside, fourchettes, and extended gauntlet cuff, is made up of 94% polyester and 6% spandex woven fabric. The outer gloves also feature a partially elasticized wrist, a drawstring tightener sewn into the gauntlet hem, and pre-curved finger construction. The outer gloves also feature inner molded foam padding placed over the backside of four fingers, across the backside knuckles and hand, and along the sidewalls of the pinky finger. The outer gloves are designed for use in the sport of ice climbing and the essential character is imparted by the goatskin leather palmside. The glove has a dedicated glove liner made of coated woven fabric. The dedicated glove is lined and insulated and is secured to the outershell glove by means of hook and loop fabric. The dedicated glove liners also feature fourchettes and a pull tab sewn to the outer edge of the cuff that enables the gloves to be pulled out easier.

Style Specialist #801642 is a pair of lined and insulated unisex ice-climbing gloves. The gloves are made of a palm side, from fingertips to wrist, composed of over 90% goatskin leather, which also forms the sidewalls of the thumb and forefinger and overlaps the fingertips and thumb tip. A second goatskin leather palm overlay is sewn across the palm using Kevlar stitching, and also overlaps the sidewalls. The remainder of the outer shell, which includes a small portion of the bottom of the palm side at the wrist, the

backside, fourchettes, and extended gauntlet cuff, is made up of 94% polyester and 6% spandex woven fabric. The gloves also feature a partially elasticized wrist, a hook and clasp, a drawstring tightener sewn into the gauntlet hem, and pre-curved finger construction. The gloves also feature inner molded foam padding placed over the backside of four fingers, across the backside knuckles and hand, and along the sidewalls of the pinky finger. The gloves are designed for use in the sport of ice climbing and the essential character is imparted by the goatskin leather palmside.

Style Squad #801576 (men's) and #801578 (women's) is a lined and insulated multi-sport glove made of a palm side, from fingertips to wrist, composed of over 90% goatskin leather, which also makes up the fourchettes, sidewalls, and also overlaps the fingertips of the index finger, middle finger and thumb. Vented goatskin leather makes up a portion of the backside at the knuckles, the backside of the index finger, middle finger, and a portion of the ring finger; beneath the vented goatskin leather is an inner liner made of a coated woven fabric. The remainder of the outer shell, which includes a small portion of the bottom of the palmside at the wrist, the backside of the pinky finger and a portion of the backside ring finger, and extended gauntlet cuff, is made up of a woven fabric with a coating on the underside. Additional features include a partially elasticized wrist, a hook and clasp, a backside thumb made of a flocked PU fabric which serves as a nose wipe, and a second inner cuff measuring approximately 1½ inches sewn to the inner edge of the extended gauntlet cuff, which also features a drawstring tightener sewn into the hemmed bottom. The essential character of the glove is imparted by the goatskin leather palmside. Style Renegade #801431 (men's) and #801436 (women's) is a lined and insulated multi-sport glove made up of a palmside, from fingertips to wrist, composed of over 90% goatskin leather, which also makes up the sidewall of the index finger. The balance of the outershell, including a small portion of the bottom of the palmside at the wrist, the fourchettes, backside and cuff, are made up of a woven fabric that has been laminated to a knit pile fabric on the underside. Additional features include an elasticized wrist, a hook and clasp, an inner waterproof barrier, a hook and loop fastener on the cuff, a heavyweight berber fleece lining, and a backside thumb made of a flocked PU fabric which serves as a nose wipe. The essential character of the glove is imparted by the goatskin leather palmside.

Style Glissade #801724 (men's) and #801725 (women's) is a lined and insulated multi-sport glove with a complete palmside, from fingertips to wrist, composed of over 90% goatskin leather with Kevlar stitching. Goatskin leather also makes up the sidewall of the index finger and thumb. The balance of the outershell, which includes a small portion of the bottom of the palmside at the wrist, the fourchettes, backside and extended gauntlet cuff, is made up of a woven fabric that has been laminated to a knit pile fabric on the underside. Additional features include a partially elasticized wrist, a hook and clasp, an inner waterproof barrier, a backside thumb made of a flocked PU fabric which serves as a nose wipe, and a second inner cuff measuring approximately 1½ inches sewn to the inner edge of the extended gauntlet cuff, which also features a drawstring tightener sewn into the hemmed bottom. The essential character of the glove is imparted by the goatskin leather palmside.

The applicable subheading for style Enforcer #801640 and style Specialist #801642 will be 4203.21.8060, Harmonized Tariff Schedule of the United



States (HTSUS), which provides for articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: specially designed for use in sports: other . . . other. The duty rate will be 4.9% ad valorem.

The applicable subheading for the men's versions of style Squad #801576, Renegade #801431, and Glissade #801724 will be 4203.29.3020, HTSUS, which provides for articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: men's . . . lined. The duty rate will be 14% ad valorem.

The applicable subheading for the women's versions of style Squad #801578, Renegade #801436, and Glissade #801725 will be 4203.29.5000, HTSUS, which provides for articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: for other persons: lined. The duty rate will be 12.6% 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Deborah Marinucci at (646) 733-3054.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

[ATTACHMENT D]

HQ H055387  
CLA-2 OT:RR:CTF:TCM H055387 CkG  
Category: Classification  
Tariff No.: 4203.21.60, 4203.21.80, 6116.93.94

MR. RICHARD S. LUSKIN, ESQ.  
BLACK DIAMOND EQUIPMENT, LTD.  
2084 East 3900 South  
Salt Lake City, UT 84124

Re: Reconsideration of NY N042400, NY N042401 and N042402; classification of sports gloves

DEAR MR. LUSKIN,

This is in response to your letter of March 12, 2009, requesting reconsideration of New York Rulings Letters (NY) N042400, N042401, and N042402, dated November 14, 2008, with regard to the classification of nine styles of cold weather/winter sports gloves.

**FACTS:**

The merchandise at issue is identified as Stormweight (Style # 801060), Windweight (Style #801062, 801063), Legend (Style # 801605, 801610), Fever (Style # 801564, 801566), Prodigy (Style # 801551, 801555), Guide (Style # 801511, 801512), Squad (Style # 801576, 801578), Renegade (Style # 801431, 801436), and Glissade (Style # 801724 and 801725).

Styles Legend, Fever, Prodigy, Guide, Squad and Renegade pertain to the FREERIDE line of gloves. The Black Diamond catalog states that “[t]he Freeride series features skiing specific designs intended to provide the most appropriate warmth and protection possible.”

Style Fever #801564 (men’s) and #801566 (women’s) is a lined and insulated glove made with a palmside, from fingertips to wrist, composed of over 90% goatskin leather. A goatskin leather palm overlay is also sewn across the palmside and overlaps four fingertips and the base of the backside knuckles. A strip of leather is sewn across the lower part of the backside. The backside thumb is made of a flocked polyurethane (PU) fabric which serves as a nose wipe. The remainder of the outer shell includes a small portion of the bottom of the palmside at the wrist, the backside which contains a zippered pocket into which a heat pack is inserted for extra warmth, fourchettes, sidewalls, extended gauntlet cuff and is made up of a woven fabric that has been laminated to a knit pile fabric on the underside. The gloves also feature an elasticized wrist, a hook and clasp, an inner waterproof barrier, and a ribbed knit cuff extending beyond the gauntlet bottom.

Style Legend #801605 (men’s) and #801610 (women’s) is a lined and insulated glove made with a palm side, from fingertips to wrist composed of goatskin leather. Goatskin leather also makes up the majority of the backside and sidewalls. The remainder of the glove, which includes a portion of the fourchettes, the bottom portion of the backside, and the cuff, are made of a coated woven fabric. The backside thumb is made of a flocked PU fabric which serves as a nose wipe. Other features include a hook and loop fastener at the cuff, a hook and clasp, and irregular shaped molded foam padding placed over two of the backside fingers and across the backside knuckles.

Style Prodigy #801551 (men’s) and #801555 (women’s) is a lined and insulated glove. The gloves feature a palm side, from fingertips to wrist, and a complete index finger, made up of over 90% goatskin leather, which extends across the backside knuckles and makes up the sidewalls of the thumb and index finger. A goatskin leather palm overlay is sewn across the palmside. Leather inserts make up three of the backside fingertips, the backside finger knuckles, and the base of the backside thumb. The remainder of the outer shell, which includes a small portion of the palm side at the wrist, fourchettes, backside and extended gauntlet, are made up of a coated woven textile fabric. The outer gloves also feature an elasticized wrist, a drawstring tightener sewn into the gauntlet hem, and a backside thumb made up of a flocked PU fabric which serves as a nose wipe. The glove has a dedicated glove liner made of a coated woven fabric. The dedicated liners are lined and insulated and are attached to the outer gloves by means of hook and loop fabric. The dedicated glove liners feature fourchettes and a pull tab sewn to the outer edge of the cuff that enables the liners to be pulled out more easily.

Style Guide #801511 (men’s) and #801512 (women’s) is a lined and insulated glove. The gloves are made of a palm side, from fingertips to wrist, made up of over 90% goatskin leather, which also extends to form the sidewalls and overlaps four fingertips. A goatskin leather palm patch is sewn across the palmside. The backside thumb is made of a flocked PU fabric which serves as a nose wipe. The remainder of the glove, which includes a small portion of the bottom of the palmside at the wrist, the backside, fourchettes, and extended gauntlet cuff, are made up of a coated woven fabric. A leather goatskin overlay is sewn across the backside knuckles, a portion of which also features an irregular shaped molded foam padding. Addi-

tional features include an elasticized wrist and a drawstring tightener sewn into the gauntlet hem. The glove has a dedicated glove liner made of a coated woven fabric. The dedicated liners are lined and insulated and are attached to the outer glove by means of hook and loop fabric. The dedicated glove liners feature fourchettes, a knit berber lining, and a pull tab sewn to the outer edge of the cuff that enables the liners to be pulled out more easily.

Style Squad #801576 (men's) and #801578 (women's) is a lined and insulated glove made of a palm side, from fingertips to wrist, composed of over 90% goatskin leather. Goatskin leather also makes up the fourchettes, sidewalls, and overlaps the fingertips of the index finger, middle finger and thumb. Vented goatskin leather makes up a portion of the backside at the knuckles, the backside of the index finger, middle finger, and a portion of the ring finger. Beneath the vented goatskin leather is an inner liner made of a coated woven fabric. The remainder of the outer shell, which includes a small portion of the bottom of the palmside at the wrist, the backside of the pinky finger and a portion of the backside ring finger, and extended gauntlet cuff, is made up of a woven fabric with a coating on the underside. Additional features include a partially elasticized wrist, a hook and clasp, a backside thumb made of a flocked PU fabric which serves as a nose wipe, and a second inner cuff with a drawstring tightener sewn into the hemmed bottom measuring approximately 11/2 inches sewn to the inner edge of the extended gauntlet cuff.

Style Renegade #801431 (men's) and #801436 (women's) is a lined and insulated glove made up of a palmside, from fingertips to wrist, composed of over 90% goatskin leather. Goatskin leather also makes up the sidewall of the index finger. The balance of the outershell, including a small portion of the bottom of the palmside at the wrist, the fourchettes, backside and cuff, are made up of a woven fabric that has been laminated to a knit pile fabric on the underside. Additional features include an elasticized wrist, a hook and clasp, an inner waterproof barrier, a hook and loop fastener on the cuff, a heavyweight berber fleece lining, and a backside thumb made of a flocked PU fabric which serves as a nose wipe.

Style Glissade pertains to the ASCENT line of gloves, which are described in the black diamond catalog as "designed for general mountaineering, alpine climbing, or use in winter environments where breathability and temperature regulation are crucial." Style Glissade #801724 (men's) and #801725 (women's) is a lined and insulated glove with a complete palmside, from fingertips to wrist, composed of over 90% goatskin leather with Kevlar stitching. Goatskin leather also makes up the sidewall of the index finger and thumb. The balance of the outershell, which includes a small portion of the bottom of the palmside at the wrist, the fourchettes, backside and extended gauntlet cuff, is made up of a woven fabric that has been laminated to a knit pile fabric on the underside. Additional features include a partially elasticized wrist, a hook and clasp, an inner waterproof barrier, a backside thumb made of a flocked PU fabric which serves as a nose wipe, and a second inner cuff which features a drawstring tightener sewn into the hemmed bottom that measures approximately 11/2 inches sewn to the inner edge of the extended gauntlet cuff.

Styles Windweight #801062 (men's) and #801063 (women's) and Stormweight (#801060) pertain to Black Diamond's LINER series. The Black Diamond catalog describes them as "comfortable, fitted gloves that can be used on their own or with the ASCENT series."

Style Stormweight #801060, is described as a pair of unisex gloves/liners. The gloves are made up of 100% polyester knit fabric that features a breathable windstopper membrane on the inner surface which is sandwiched between a finely knit polyester fabric on the inner surface and a brushed polyester fabric on the outer surface of the glove. A goatskin leather overlay makes up the palmside, from fingertips to wrist, and overlaps the fingertips and thumb tip. Other features include a partially elasticized wrist, a hook and clasp, and fourchettes.

Style Windweight #801062 (men's) and #801063 (women's) is a cold weather glove/liner made up of a 100% knit polyester fleece outer shell. A goatskin suede leather palm patch is located across the center of the palm and covers a portion of the base of the index finger and thumb. The tip of the palmside thumb, index and middle fingers feature a small silicon dotted overlay. Other features include a partially elasticized wrist, knit polyester fleece fourchettes and sidewalls, and a hook and clasp.

Styles #801551, #801555, #801511 and #801512 were classified in subheading 4203.21.8060, HTSUS, which provides for "articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: specially designed for use in sports: other . . . other."

Styles #801564, #801724, #801605, #801576, #801431 were classified in subheading 4203.29.3020, HTSUS, which provides for "articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: men's . . . lined."

Styles #801566, #801610, #801578, #801436 and #801725 were classified in subheading 4203.29.5000, HTSUS, which provides for "articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: for other persons: lined."

Style #801060 was classified in subheading 4203.29.40, HTSUS, as "articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: for other persons: not lined"

Styles #801062 and #801063 were classified in subheading 6116.93.94, HTSUS, which provides for "gloves, mittens and mitts, knitted or crocheted: other: of synthetic fibers: other: other: with fourchettes."

**ISSUE:**

1. Whether the material of the palmside or outer shell imparts the essential character of the subject gloves.
2. Whether the subject gloves are classified as gloves specially designed for use in sports or "other" gloves

**LAW AND ANALYSIS:**

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

The HTSUS provisions at issue are as follows:

4203: Articles of apparel and clothing accessories, of leather or of composition leather:

Gloves, mittens and mitts:

- 4203.21: Specially designed for use in sports:
    - Ski or snowmobile gloves, mittens and mitts:
      - 4203.21.55: Cross-country ski gloves, mittens and mitts
      - 4203.21.60: Other
      - 4203.21.80: Other
      - 4203.29: Other:
        - Other:
          - 4203.29.30: Men's
          - 4203.29.3020: Lined
            - For other persons:
              - 4203.29.40: Not lined
              - 4203.29.50: Lined
                - \* \* \* \* \*
- 6116: Gloves, mittens and mitts, knitted or crocheted
  - Other:
    - 6116.93: Of synthetic fibers:
      - 6116.93.08: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts . . . . .
        - Other:
          - Other:
            - 6116.93.94: With fourchettes
              - \* \* \* \* \*
- 6216: Gloves, mittens and mitts:
  - Other:
    - Of man made fibers:
      - 6216.00.46: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts . . . . .
        - \* \* \* \* \*

Since the gloves at issue are composite goods of leather and textile, classification is determined by application of GRI 3(b). GRI 3(b) provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character. Court decisions on the es-

sential character for 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. See Better Home Plastics Corp. v. U.S., 915 F. Supp. 1265 (CIT 1996), *aff'd* 119 F. 3d 969 (Fed. Cir. 1997); Mita Copystar America, Inc. v. U.S., 966 F.Supp. 1245 (CIT 1997), *rehear'g denied*, 994 F. Supp. 393 (1998).

You contend that, except for Style #801725, the essential character of the merchandise is imparted by the textile component. As such, you argue that the merchandise is classified in heading 6216, HTSUS. You argue that Style # 801725 is classified in heading 4203, HTSUS. Alternatively, you contend that Style #'s 801060, 801605, 801610, 801564, 801566, 801578, 801576, 801431 and 801436 are classifiable in heading 4203, HTSUS and Style # 801062 is classified in heading 6116, HTSUS.

While you contend that the outer shell imparts the essential character to Style #s 801605, 801610, 801564, 801566, 801555, 801551, 801511, 801512, 801576, 801578, 801431 and 801436 because it provides waterproofing and breathability, the Black Diamond catalog indicates that the Gore-Tex inserts are also waterproof and breathable. Furthermore, the coating on the outer shell limits the breathability of the woven nylon material, decreasing the role of the outer shell in relation to the glove as a whole. Therefore, the essential character of the gloves is imparted by the leather palmside, which provides the grip, and reinforces the area of stress caused by grasping the ski poles. See HQ 089576, dated August 27, 1991.

We agree that the essential character of Style #s 801724 and 801725 is imparted by the leather palmside, which imparts the grip and is thus crucial for climbing.

The suede portion of Style #s 801062 and 801063 plays a minimal role in relation to the textile portion, in that it covers a small area of the glove and is not otherwise prominent. The essential character is thus imparted by the wind-resistant knit Polartec shell. Insofar as the gloves are classified by the knit shell, classification in heading 6216, HTSUS, is inapplicable insofar as the legal text of heading 6216 is limited to gloves, mittens and mitts not knit or crocheted. As such, style #s 801062 and 801063 are classified in heading 6116, HTSUS.

At the six-digit subheading level, you request classification of the subject articles as gloves specially designed for use in sport, principally skiing.<sup>21</sup> For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use "is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

---

<sup>21</sup> GRI 6 provides that for legal purposes, classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See United States v. Carborundum Company, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (hereinafter Carborundum).

In Sports Industries, Inc. v. United States, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term “designed for use,” examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. A conclusion that a certain glove is “specially designed” for a particular sport requires more than a mere determination of whether the glove or pair of gloves could possibly be used while engaged in that sport. See HQ 965714, dated November 15, 2002; HQ 965157, dated May 14, 2002. To determine whether an article is specially designed for a specific sport requires consideration of whether the article has particular features that adapt it for the stated purpose.

With regard to the proper classification of ski gloves, the court in Stonewall Trading Company v. United States, Cust. Ct. 482, C.D. 4023 (1970) held that ski gloves possessing the following features were specially designed for use in the sport of skiing:

- 1) A hook and clasp to hold the gloves together;
- 2) An extra piece of vinyl stitched along the thumb to meet the stress caused by the flexing of the knuckles when the skier grasps the ski pole;
- 3) An extra piece of vinyl with padding reinforcement and inside stitching which is securely stitched across the middle of the glove where the knuckles bend and cause stress;
- 4) Cuffs with an elastic gauntlet to hold the gloves firm around the wrist so as to be waterproof and to keep it securely on the hand.

The Stonewall criteria are used as a guideline to aid in the classification of sports gloves and mittens, but they are neither mandatory nor all-inclusive in determining whether a glove merits classification under this provision. A case by case analysis will be used by CBP in determining whether a glove’s design merits classification as a ski glove under headings 6116 or 6216, HTSUS. See Headquarters Ruling Letter (HQ) 954733, dated December 21, 1993; HQ 089589, dated August 19, 1991. Even if the Stonewall criteria are met, a glove is not classifiable as a ski glove if it is not functionally practicable for such use. See HQ 952393, dated August 28, 1992; HQ 953629, dated Jul 8, 1993. In addition to the *Stonewall* criteria outlined above, CBP consistently considers the protective features of a glove (e.g., resistance to wind and water) and how the gloves are advertised and sold. See e.g., HQ 956188, dated December 29, 1994; HQ 954425, dated September 10, 1993; HQ 953629, dated Jul 8, 1993; and HQ 088374, dated June 24, 1991.

Examination of the FREERIDE line of gloves (Style #'s 801605, 801610, 801564, 801566, 801551, 801555, 801511, 801512, 801576, 801570, 801431 and 801436) yields the finding that they meet several of the Stonewall crite-

ria. All styles in the FREERIDE line possess an elastic gauntlet to hold the gloves firm around the wrist, and thus satisfy the fourth Stonewall criterion. However, some styles lack some of the remaining Stonewall criteria. The Prodigy, Squad and Renegade gloves all lack reinforcement of the knuckles. The Guide and Prodigy gloves also lack a hook and clasp to keep the gloves together. Only the Fever and Renegade gloves feature extra stitching along the thumb.

However, as noted above, the Stonewall criteria are not necessarily determinative of the classification of a glove. CBP will also examine additional physical characteristics such as the construction of the glove, the materials used and their resistance to the elements as well as the marketing, advertisement and sale of the subject gloves.

The general physical characteristics of the FREERIDE gloves evidence a design specific to skiing. This is demonstrated by the gloves' incorporation of such components as Gore-Tex and Primaloft insulation, the elasticized wrists with a drawstring tightener and extended gauntlet cuff which effectively keep moisture out, the use of leather palm reinforcement which enables a more secure grip than does plastic, the nose wipe on the backside thumb and the overall sturdy appearance and sound workmanship. Furthermore, the environment of sale of the gloves indicates that they are specially designed for use in skiing. The importer's catalog describes the FREERIDE line of gloves as featuring "skiing-specific designs." The Prodigy, Legend, Guide, and Renegade gloves are featured on outdoor sporting goods websites such as Altrec, [www.Backcountry.com](http://www.Backcountry.com) and [www.MountainGear.com](http://www.MountainGear.com) as ski gloves. The FREERIDE gloves are thus designed to withstand the rigorous, cold and wet conditions of extreme skiing, are marketed as ski gloves, and are sold in the same channels of trade as other ski gloves. Insofar as no evidence has been presented to support a finding that the gloves are designed, marketed or sold as cross-country gloves of subheading 4203.21.55, HTSUS, they are classified as "other" ski gloves of subheading 4203.21.60, HTSUS.

Style Glissade (Style #s 801724 and 801725) is described in the black diamond catalog as "designed for general mountaineering, alpine climbing, or use in winter environments where breathability and temperature regulation are crucial." Like the ski gloves in the Freeride series, the Glissade gloves feature an elasticized wrist, a hook and clasp, an extended gauntlet cuff with drawstring tightener, and reinforced stitching along the thumb portion. Due to the lack of sufficient evidence demonstrating that the Glissade glove is designed, marketed or sold as a ski glove, it is classified in subheading 4203.21.80, HTSUS, as other gloves specially designed for use in sports.

Similarly, the Black Diamond catalog does not indicate that Windweight style #s 801062 (men's) and #801063 (women's) and Stormweight (Style # 801060) have a specialized design for use in skiing. Both gloves are constructed primarily of knit polyester fleece. CBP has previously deemed gloves of knit fabric to be unsuitable for use in skiing due to the tendency of the fabric to retain and absorb moisture and dry slowly, as well as the tendency of snow to adhere to such fabric. See HQ 953629, dated Jul 8, 1993, in which two styles of gloves with an additional plastic insert or an inner waterproof barrier did not render the glove sufficiently water resistant due to the tendency of snow to adhere to the acrylic material of the glove. HQ 954425, dated September 10, 1993, similarly noted that "Gloves that are comprised of significant amounts of knit fabric which allow moisture to penetrate the wearer's hands are not suitable for use in skiing."



Furthermore, the partially elasticized wrists of both liner styles do not provide a sufficiently tight seal against snow and water, particularly given the absence of a drawstring tightener or additional knit cuff. See HQ 952393, dated December 30, 1992. The suede palm patch of the Windweight liner also does not provide sufficient resistance to snow and damp conditions. CBP observed in HQ 088374, dated June 24, 1991, that suede leather was not particularly well suited for a ski glove: “Both glove styles are largely covered in sueded leather . . . suede will absorb and retain moisture, stretch out of shape and/or expand, and dry slowly, which makes it highly unsuitable to the sport of skiing where contact with snow is a characteristic occurrence; treatment of the skins with a water-repellent chemical may protect such gloves from minor contact with the elements but does not transform these gloves into gloves specially designed for use in skiing.” The use of suede to reinforce the palm in order to provide better grip and texture, on the other hand, has been held to constitute a useful feature of ski gloves where the glove had other, sufficient water-resistant properties. See HQ 954733, dated December 21, 1991, in which gloves with a suede leather palm and additional inner linings of Gore-Tex, foam, and thinsulate were classified as ski gloves. Moreover, the suede palm patch does not extend past the base of the thumb and index finger. The Windweight gloves only feature a silicone overlay on the tip of the palmside thumb, index and middle fingers. The polyester fleece on the remainder of the palmside and the rest of the glove remains uncovered. The leather overlay on the palmside of the Stormweight gloves, on the other hand, provides for greater water protection and a surer grip, extending from the fingertips to the wrist. Finally, the liner gloves are made from a lightweight, sheer construction and lack padding to protect hands from injuries resulting from falls.

The tag on the Stormweight gloves states that they are designed for runners, hikers, and backcountry skiers. The Stormweight glove, due to the heightened protection and surer grip that the palmside material provides as well as the marketing indicating it is designed with runners, hikers and skiers in mind, is classified in subheading 4203.21.80, HTSUS, as “gloves, mittens and mitts: specially designed for use in sports: other.”

The suede palm patch for grip and durability, silicone overlays on the fingertips for improved tactility, the “windbloc” polartec fleece shell in conjunction with marketing information and consumer reviews obtained from [www.backcountry.com](http://www.backcountry.com) and [www.amazon.com](http://www.amazon.com) evidence that the Windweight glove is specially designed, marketed and sold for use in climbing and mountaineering. It is classified in subheading 6116.93.08, HTSUS, as knit gloves specially designed for use in sports.

**HOLDING:**

By application of GRI 3, styles 801605, 801610, 801564, 801566, 801551, 801555, 801511, 801512, 801576, 801578, 801431, and 801436 are classified in subheading 4203.21.60, HTSUS, which provides for: “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Ski or snowmobile gloves, mittens and mitts: Other.” The 2009 column one, general rate of duty is 5.5% *ad valorem*.

Styles 801724 and 801725 are classified in subheading 4203.21.80, HTSUS, which provides for: “Articles of apparel and clothing accessories, of

leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Other.” The 2009 column one, general rate of duty is 4.9% *ad valorem*.

Style 801060 is classified in subheading 4203.21.80, HTSUS, which provides for: “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Other.” The 2009 column one, general rate of duty is 4.9% *ad valorem*.

Styles 801062 and 801063 are classified in 6116.93.08, which provides for: “Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts.” The 2009 column one, general rate of duty is 2.8% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

New York Rulings Letters (NY) N042400, N042401, and N042402, dated November 14, 2008, are hereby modified with respect to the classification of styles 801605, 801610, 801564, 801566, 801551, 801555, 801511, 801512, 801576, 801578, 801431, 801436, 801724, 801725, and 801060.

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division.*

**GENERAL NOTICE**

**19 CFR PART 177**

**MODIFICATION OF RULING LETTER ALLOWING  
CONTAINERS CONTAINING RESIDUAL CHEMICALS TO  
BE ENTERED AS EMPTY CONTAINERS**

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

ACTION: Notice of modification of a headquarters ruling letter allowing containers containing residual chemicals to be entered as empty containers.

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 modifying one ruling letter allowing containers containing residual chemicals to be entered as empty containers. Notice of the proposed

action was published in the Customs Bulletin, Vol. 42, No. 35, on August 20, 2008.

DATE: This action is effective for containers arriving in the United States on or after August 16, 2009.

FOR FURTHER INFORMATION CONTACT: Christina Kopitopoulos, Cargo Security, Carriers, and Immigration Branch, at (202) 325-0217.

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, a notice was published in the Customs Bulletin, Vol. 42, No. 35, on August 20, 2008, proposing to modify HQ 113129, dated July 12, 1994, which allowed containers meeting the requirements of 19 U.S.C. 1322(a) and 19 CFR 10.41a as instruments of international traffic (IITs) and containing residual chemicals to be entered as empty containers. In order to be consistent with CBP's treatment of similar commodities, such as petroleum slops, and to ensure the safety and security of the transportation of such containers and CBP Officers who examine them, CBP proposed that the containers should not be entered, nor manifested, as empty, and the chemical residue contained should be classified, entered, and manifested.

Fourteen (14) comments were received in response to the notice. Numerous comments were received seeking clarification of the scope of the modified ruling, i.e., was it limited to steel containers and chemicals? CBP in this notice is specifically modifying HQ 113129,

and any other ruling not specifically identified that is contrary to the determination set forth in this notice. Containers with cargo, regardless of the amount of the cargo, will need to be manifested and entered in compliance with all customs laws.

One commenter suggested CBP use the term “portable tank” to reference these containers. CBP agrees that this is one type of container that is at issue in the proposed modification and this notice. Henceforth, when CBP refers to containers, that reference includes “portable tanks,” but is not limited to that type of container.

Three commenters stated that their containers are already marked and placarded as required by the Department of Transportation and the shipping documentation accompanying the containers includes a Material Safety Data Sheet that describes the residue inside the container, so the modified ruling is unnecessary. CBP disagrees, as these containers are not actually empty and therefore are not in compliance with the advance cargo information transmission requirements under 19 CFR 123.91 and 123.92. They are also not in compliance with the requirement to make entry pursuant to 19 CFR 141.4 as they are not merely empty IITs. The lack of compliance with customs laws is not only a security risk to the United States, but a potential risk to the health and safety of CBP officers unaware of the volume or contents of the containers they are encountering. In addition, the revenue collection responsibilities of CBP are affected due to such lack of compliance.

Numerous commenters stated that they fail to see how the new requirements will protect CBP officers, and that those officers should not be opening containers used to transport hazardous materials nor should CBP’s treatment of the containers differ based on the contents. CBP disagrees as CBP officers have a right to know if they are in close proximity to, or working with, an empty container or a partially empty container that may pose a risk not only to the United States, but also to their own health and safety.

Numerous commenters stated that the costs associated with filing the entries and manifests would be burdensome resulting in exorbitant expenses. CBP is aware that costs for these containers would increase as advance cargo declarations and entries would be required to be filed. As to manifests, empty containers have always been required to be manifested, and a container must be empty to be manifested as such. Furthermore, these costs would merely bring the containers in compliance with customs laws they should have been subject to all along.

A number of commenters stated they believe this requirement is new and should be submitted to OMB as a new information collection request and/or is a new significant rulemaking. CBP disagrees, and notes that this modification merely brings these containers in line with customs legal requirements from which they were incorrectly exempted in HQ 113129.

Three commenters stated that under NAFTA these new requirements will not generate revenue. CBP demurs because whether revenue is generated is not pertinent since this change is being made for the safety and the security of the CBP officers at the ports of entry.

One commenter stated that it is common industry practice not to “clean and purge” bulk packaging if it is to be refilled with the same or compatible products. This common industry practice does not obviate the trade’s responsibility for knowing what is in the containers, where they originated, or the amount actually in the containers. If anything, it further illustrates the need for manifesting and filing entries on the residue.

Two commenters stated that in terms of exact quantities, railcars and bulk containers are filled to visible capacity, but not “scaled” until well en route. CBP believes that industry practice must be reconciled with CBP’s advance cargo information transmissions required pursuant to 19 CFR 123.91 and 123.92, which provide that the quantity information is required 2 hours prior to arrival for rail, 1 hour prior to arrival for non-FAST truck carriers, and 30 minutes prior to arrival for FAST truck carriers.

Numerous commenters stated the modified ruling will increase border crossing congestion, decrease the effectiveness of FAST lanes, and underutilize ACE. CBP disagrees with this statement as there is no evidence supporting these claims beyond these unsubstantiated statements.

Two commenters expressed reservations in relying on an unrelated party to provide “estimated” quantities of residue or to know what is in the shipping containers prior to importation. Any information provided by an unrelated party could be incorrect and lead to penalties. CBP believes again that this further bolsters the need to receive accurate advance cargo information and entries on the residue in these containers. Either the carrier or importer is responsible to CBP for knowing what is in the containers, where it originated, or the actual amount that has been deemed to be “residue” for purposes of manifesting and entry.

One commenter stated that they believe there exists the potential for environmental waste because of U.S. suppliers refusing the return of containers with residuals. The commenter offers no information beyond the unsubstantiated statement that this concern would cause a prohibitive increase in refused containers leading to environmental waste.

One commenter asked about the liability involved in “dedicated” shipping containers that just go back and forth across the border to move the same chemical and are never cleaned, but may be used by the foreign customer for whatever purposes they want, and are then sealed for movement across the border. CBP does not believe those

containers would be outside the scope of this notice, if they fell within the class of containers described herein arriving at a United States border.

One commenter asked if new drums would require documentation that the container is new and unused. CBP will not require certification that containers are new. Used and new containers are used as IITs in international trade in all contexts and certifications as to their new or used status is not required.

Two commenters sought a definition of “empty.” CBP clarifies with the following. Empty means an empty container. There is no de minimus allowance.

As stated in the proposed notice, this modification is specifically referring to Headquarters Ruling Letter (“HQ”) 113129, dated July 12, 1994 (Attachment ). This notice also covers any rulings raising this issue 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 containers subject to this notice should have advised CBP during this notice period.

As mentioned above, fourteen (14) comments were received in response to the proposed notice. The comments and CBP’s response are discussed above. Accordingly, pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 113129 and any other ruling not specifically identified that is contrary to the determination set forth in this notice and HQ H026715 (Attachment) to correctly reflect CBP’s position regarding the treatment of containers containing residual chemicals.

DATED: June 19, 2009

JEREMY BASKIN,  
*Director,*  
*Border Security and Trade Compliance Division.*

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ 113129  
July 12, 1994  
BOR-4-07-CO:R:IT:C 113129 GOB  
CATEGORY: Carriers

ROGER E. GOBROGGE  
PATENT ATTORNEY  
DOW CORNING CORPORATION  
*P.O. Box 994*  
*Midland, Michigan 48686-0994*

RE: Instruments of International traffic; 19 U.S.C. 1322; 19 CFR 10.41a;  
Empty containers

DEAR MR. GOBROGGE:

This is in response to your letter dated May 11, 1994. You have also provided additional information to us since that time.

## FACTS:

On behalf of Dow Corning, you request a ruling as follows. You request a ruling that certain items be designated as instruments of international traffic within the meaning of 19 CFR 10.41a. You describe the items as follows: 40 steel containers which are 20 feet by eight feet by eight feet. Some of the containers are stainless steel, others are carbon steel. The containers are used to ship chemicals.

You also request a ruling with respect to the importation of certain residual chemicals in these containers. In your letter of May 11, 1994, you describe the facts thusly:

In a proposed transaction, Dow Corning will fill one of these large containers with a chemical (eg., ethyltrichlorosilane). The filled container will be exported to its subsidiary (eg., in Barry, Wales). The Welsh plant will empty this container and use the chemical therein to produce products. The empty container will be imported back into the United States, cleaned, refilled and re-exported.

By virtue of the size of the container, it is nearly impossible to empty it completely. Accordingly, when the container is imported into the United States, it will contain some residual of the original chemical, i.e., it will not be completely empty.

We could attempt to quantify the chemical (which would be very difficult from a practical standpoint) and reimport it as returned US goods under HTS 9801.

Alternatively, we could consider the container "empty". Recently, however, Dow Corning discovered that such residuals are covered by the Toxic Substances Control Act (TSCA). As such, there would appear to be an inconsistency in attaching a TSCA certificate to an "empty" container.

In a letter dated June 20, 1994, you provided the following additional information:

. . . Each container holds approximately 3600 gallons, although the contents are generally weighed rather than measured in volume.

. . . The residual in these tanks is generally about 50 gallons [approximately 1.4 percent of the amount when the container is filled], although this can vary over a wide range.

. . . The residual in these containers is generally not discarded (unless the tank is to be repaired). Rather, additional chemicals are merely added to the tank.

#### ISSUES:

1. Whether the subject items may be designated as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a.

2. The appropriate manner in which to enter the containers which contain residual chemicals.

#### LAW AND ANALYSIS:

19 U.S.C. 1322(a) states in part:

Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.

The Customs Regulations issued under the authority of 19 U.S.C. 1322 are contained in 19 CFR 10.41a. 19 CFR 10.41a(a)(1) designates lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics as instruments for international traffic.

19 CFR 10.41a(a)(1) also authorizes the Commissioner of Customs to designate as instruments of international traffic such additional articles or classes of articles as he shall find should be so designated. Instruments so designated may be released without entry or the payment of duty, subject to the provisions of 19 CFR 10.41a.

To qualify as an instrument of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a, an article must be used as a container or holder; the article must be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic. See Headquarters decisions 108084, 108658, 109665, and 109702.

After a review of the information submitted, we determine that the steel containers meet the requirements to be designated as instruments of international traffic.

We also determine that under the facts described supra, the containers which contain a residue of chemicals may be entered as empty. This determination is limited to the facts of this case, including the fact that the residue is a very small part of the amount of a full container (approximately 1.4 percent) and the fact that the residue remains in the container because it is virtually impossible to completely empty the container.

As we informed you telephonically, we are unable to express any opinion with respect to any requirements of the laws and regulations administered by the Environmental Protection Agency.



## HOLDINGS:

1. The subject steel containers are designated as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a.

2. Under the facts of this case, the steel containers may be entered as empty containers.

ARTHUR P. SCHIFFLIN,  
*Chief Carrier Rulings Branch.*

## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H026715  
June 19, 2009  
RR:BSTC:CCI H026715 CK  
CATEGORY: Carriers

ROGER E. GOBROGGE  
PATENT ATTORNEY  
DOW CORNING CORPORATION  
*P.O. Box 994*  
*Midland, Michigan 48686-0994*

RE: Instruments of International Traffic; 19 U.S.C. 1322; 19 CFR 10.41a;  
Entry and Manifesting of Containers

DEAR MR. GOBROGGE:

This is in regard to ruling letter HQ 113129, dated July 12, 1994, in which we held that the containers at issue containing residual chemicals therein were "instruments of international traffic" and should be entered as empty. We have reconsidered our position that the containers should be entered as empty and we are thus informing you we are modifying our position as to this holding. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on August 20, 2008, in Volume 42, Number 35, of the CUSTOMS BULLETIN. CBP received 14 comments in response to the notice.

## FACTS:

In your letters of May 11, 1994 and June 20, 1994, on behalf of Dow Corning, you requested a ruling that certain items be designated as instruments of international traffic within the meaning of 19 CFR 10.41a. You describe the items as follows: 40 steel containers which are 20 feet by eight feet by eight feet. Some of the containers are stainless steel, others are carbon steel. The containers are used to ship chemicals. You also request a ruling with respect to the importation of certain residual chemicals in these containers.

You describe the facts thusly:

In a proposed transaction, Dow Corning will fill one of these large containers with a chemical (eg., ethyltrichlorosilane). The filled container will be exported to its subsidiary (eg., in Barry, Wales). The Welsh plant

will empty this container and use the chemical therein to produce products. The empty container will be imported back into the United States, cleaned, refilled and re-exported.

...

By virtue of the size of the container, it is nearly impossible to empty it completely. Accordingly, when the container is imported into the United States, it will contain some residual of the original chemical, i.e., it will not be completely empty.

...

We could attempt to quantify the chemical (which would be very difficult from a practical standpoint) and reimport it as returned US goods under HTS 9801.

Alternatively, we could consider the container "empty". Recently, however, Dow Corning discovered that such residuals are covered by the Toxic Substances Control Act (TSCA). As such, there would appear to be an inconsistency in attaching a TSCA certificate to an "empty" container.

... Each container holds approximately 3600 gallons, although the contents are generally weighed rather than measured in volume.

... The residual in these tanks is generally about 50 gallons [approximately 1.4 percent of the amount when the container is filled], although this can vary over a wide range.

... The residual in these containers is generally not discarded (unless the tank is to be repaired). Rather, additional chemicals are merely added to the tank.

#### ISSUES:

1. Whether the subject items may be designated as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a.
2. The appropriate manner in which to enter the containers which contain residual chemicals.

#### LAW AND ANALYSIS:

19 U.S.C. 1322(a) states in part:

Vehicles and other instruments of international traffic, of any class specified by the Secretary . . . , shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary . . .

The Customs and Border Protection ("CBP") regulations issued under the authority of 19 U.S.C 1322(a) are contained in 19 CFR 10.41a. Section 10.41a(a)(1) designates lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics as instruments for international traffic.

Section 10.41a(a)(1) also authorizes the Commissioner of CBP to designate as instruments of international traffic such additional articles or classes of articles as he shall find should be so designated. Instruments so designated may be released without entry or the payment of duty, subject to the provisions of 19 CFR 10.41a.

To qualify as an instrument of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a, an article must be used as a container or holder; the article must be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic. See Headquarters decisions 108084, 108658, 109665, and 109702.

After a review of the information submitted, we determine that the steel containers meet the requirements to be designated as instruments of international traffic.

In order to be consistent with CBP's treatment of similar commodities, such as petroleum slops, and to ensure the safety and security of the transportation of such containers and the CBP officers who may examine or work in close proximity to them, CBP believes that these containers should not be entered as empty, nor should they be manifested as empty. This position is in furtherance of the advance cargo information reporting requirements authorized pursuant to 19 U.S.C. 2071 note; and the implementing CBP regulations set forth in 19 CFR 4.7; 123.91; and 123.92.

Petroleum slops is a generic term of the petroleum industry used to describe the pumpable residue crude oil that is washed or scraped from the inside of petroleum cargo tanks on vessels. Since the gross weight (expressed in pounds or kilos) of slops cannot be determined until they are generated, the weight must be estimated prior to arrival in the U.S., so as to be in compliance with 19 CFR 4.7. The slops can be manifested as "crude oil residue," "crude oil slops" or other product specific slops. The petroleum slops of foreign origin must also be entered as imported merchandise.

With respect to the residual chemicals under consideration, in your letter of May 11, 1994, you offered to quantify the amount of chemicals upon importation and enter the chemical residue as American Goods Returned (Chapter 9801, Harmonized Tariff Schedule of the United States ("HTSUS")). We have determined that this is the more accurate procedure for the subject residual chemicals to be entered, should they so qualify for the aforementioned classification, and is in accord with the purpose of the aforementioned advance cargo information reporting requirements. Since, the exact amount of the residual chemical may not be known at the time the advance cargo information is required to be transmitted, the importer may estimate the amount when providing that information to the carrier for transmitting to CBP. Additionally, the same estimated amount should be used at the time of entry of the chemicals. Of course, if a more precise amount is obtained after arrival then the entry should be amended.

**HOLDINGS:**

1. The subject steel containers are designated as instruments of international traffic within the meaning of 19 U.S.C. 1322(a) and 19 CFR 10.41a.
2. The subject steel containers may not be manifested, and entered, as empty containers. Furthermore, the chemical residue within the containers should be classified, entered, and manifested

**EFFECT ON OTHER RULINGS:**

HQ 113129, dated July 12, 1994 is hereby MODIFIED.

JEREMY BASKIN,  
*Director,*  
*Border Security and Trade Compliance Division.*

## GENERAL NOTICE

### 19 CFR PART 177

#### PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF FC-77 FLUORINERT

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the classification of FC-77 Fluorinert.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CPB”) is proposing to revoke a ruling concerning the classification of FC-77 Fluorinert, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is proposing to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATE:** Comments must be received on or before August 16, 2009.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade--Regulation and Rulings, Attn: Mr. Joseph Clark, 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:** Allyson Mattanah, Tariff Classification and Marking Branch (202) 325-0029.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 8, 1993, Title VI (CBP 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 (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 FC-77 Fluorinert. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) B89965 (Attachment "A"), dated January 7, 1998, 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 ones 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 is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY B89965, CBP ruled that the merchandise consists of a mixture of halogenated hydrocarbons classified in subheading 3824.90.55, HTSUS. The referenced ruling is incorrect because the mixture consists of compounds other than halogenated hydrocarbons.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY B89965, 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 H058796. (Attach-

ment “B”). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 23, 2009

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
NY B89965  
January 7, 1998  
CLA-2-38:RR:NC:2:239 B89965  
CATEGORY: Classification  
TARIFF NO.: 3824.90.4700

MR. SCOTT FRISBY  
NIKON PRECISION INC.  
1399 Shoreway Road  
Belmont, CA 94002-4107

RE: The tariff classification of FC-77 Fluorinert (CAS 86508-42-1) from Japan.

DEAR MR. FRISBY:

In your letter dated September 24, 1997, you requested a tariff classification ruling for FC-77 Fluorinert which you have stated is used as a cooling agent inside machines used by the semiconductor industry to fabricate computer chips.

The applicable subheading will be 3824.90.4700, Harmonized Tariff Schedule of the United States (HTS), which provides for prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other. The rate of duty will be 3.7 percent ad valorem.

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 Thomas Brady at (212) 466-5747.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

**HQ H058796****CLA-2 OT:RR:CTF:TCM H058796 ARM****CATEGORY:** Classification**TARIFF NO.:** 3824.90.92

MR. SCOTT FRISBY  
 NIKON PRECISION INC.  
 1399 Shoreway Road  
 Belmont, CA 94002-4107

**RE:** Revocation of NY B89965; FC-77 Fluorinert (CAS 86508-42-1) from Japan.

DEAR MR. FRISBY:

This is to inform you that Customs & Border Protection (CBP) has reconsidered New York (NY) Ruling letter B89965, dated January 7, 1998, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of FC-77 Fluorinert (CAS 86508-42-1) from Japan. The substance was classified as a mixture of halogenated hydrocarbons in subheading 3824.90.47, (now 3824.90.55), HTSUS. We have determined that NY B89965 is in error. Therefore, this ruling revokes NY B89965.

**FACTS:**

According to CBP Laboratory Report #NY20071768A, dated May 8, 2008, FC-77, CAS Registry No. 86508-42-1, is a mixture of Perfluoro furans, a perfluoro pyran (oxygen heterocyclic compounds) with a perfluoro acyclic hydrocarbon. In NY B89965, we stated that "the merchandise at issue is used as a cooling agent inside machines used by the semiconductor industry to fabricate computer chips." The Material Safety Data Sheet for the product notes its specific use as a testing fluid or heat transfer fluid for electronics.

**ISSUE:**

Whether FC-77 is a mixture of hydrogenated hydrocarbons of subheading 3824.90.55, HTSUS, or an other chemical preparation of 3824.90.92, HTSUS?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The HTSUS subheadings under consideration are as follows:

3824      Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included :

3824.90      Other:

Other:

Other:

Mixtures of halogenated hydrocarbons:

3824.90.55 Other . . . . .  
 \* \* \* \* \*

Other:

3824.90.92 Other . . . . .

There is no dispute that the instant merchandise is classified as an other chemical product in subheading 3824.90, HTSUS. At issue is the proper 8-digit tariff rate. Therefore, GRI 6 is implicated. GRI 6 requires that the classification of goods at the subheading level “shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the above rules [GRIs 1–5], on the understanding that only subheadings at the same level are comparable.”

The instant merchandise contains a mixture of perfluoro furans, a perfluoro pyran (oxygen heterocyclic compounds) with a perfluoro acyclic hydrocarbon. While the perfluoro acyclic hydrocarbon is a halogenated hydrocarbon, the other compounds in the mixture are not halogenated hydrocarbons. As such, the entire mixture is not composed of only halogenated hydrocarbons and cannot be classified in subheading 3824.90.55, HTSUS. It is classified in subheading 3824.90.92, HTSUS.

**HOLDING:**

Pursuant to GRI 1, through the application of GRI 6, FC-77 Fluorinert is classified in heading 3824. It is provided for in subheading 3824.90.92, which provides for: “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other. The 2009, column one general rate of duty is 5% *ad valorem*.”

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

**EFFECT ON OTHER RULINGS:**

NY B89965, dated January 7, 1998, is revoked.

MYLES B. HARMON,  
 Director,  
 Commercial and Trade Facilitation Division.