

U.S. Customs and Border Protection

19 CFR Parts 10, 24, 162, 163, and 178]

Dec. 15-03

UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT

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

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This rule amends the U.S. Customs and Border Protection regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States Australia Free Trade Agreement entered into by the United States and the Commonwealth of Australia.

DATES: Interim rule effective February 10, 2015; comments must be received by April 13, 2015.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP-2015-0007.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

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

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Textile Operational Aspects: Diane Liberta, Textile Operations Branch, Office of International Trade, (202) 863-6241.

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

Legal Aspects: Yuliya Gulis, Regulations and Rulings, Office of International Trade, (202) 325-0042.

SUPPLEMENTARY INFORMATION:

Public Participation

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

Background

On May 18, 2004, the United States and Australia (the “Parties”) signed the U.S.-Australia Free Trade Agreement (“AFTA” or “Agreement”). On August 3, 2004, the President signed into law the United States-Australia Free Trade Agreement Implementation Act (the “Act”), Pub. L. 108-286, 118 Stat. 919 (19 U.S.C. 3805 note), which approved and made statutory changes to implement the AFTA. Section 207 of the Act requires that regulations be prescribed as necessary to implement the provisions of the AFTA.

On December 20, 2004, the President signed Proclamation 7857 (“Proclamation”) to implement the AFTA. The Proclamation, which was published in the **Federal Register** on December 23, 2004 (69 FR 77133), modified the Harmonized Tariff Schedule of the United States

(“HTSUS”) as set forth in Annexes I and II of Publication 3722 of the U.S. International Trade Commission. The modifications to the HTSUS included the addition of new General Note 28, incorporating the relevant AFTA rules of origin as set forth in the Act, and the insertion throughout the HTSUS of the preferential duty rates applicable to individual products under the AFTA where the special program indicator “AU” appears in parenthesis in the “Special” rate of duty sub-column. The modifications to the HTSUS also included a new Subchapter XIII to Chapter 99 to provide for temporary tariff-rate quotas and applicable safeguards implemented by the AFTA, as well as modifications to Subchapter XXII of Chapter 98. After the Proclamation was signed, CBP issued instructions to the field and the public implementing the Agreement by allowing the trade to receive the benefits under the AFTA effective on or after January 1, 2005.

CBP is responsible for administering the provisions of the AFTA and the Act that relate to the importation of goods into the United States from Australia. Those customs-related AFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter One (Establishment of a Free Trade Area and Definitions), Chapter Two (National Treatment and Market Access for Goods), Chapter Four (Textiles and Apparel), Chapter Five (Rules of Origin), and Chapter Six (Customs Administration).

Certain general definitions set forth in Chapter One of the AFTA have been incorporated into the AFTA implementing regulations. These regulations also implement Article 1.2 (General Definitions) and Annex 1-A (Certain Definitions) of the AFTA. The tariff-related provisions within AFTA Chapter Two that require regulatory action by CBP are Article 2.6 (Goods reentered after Repair or Alteration) and Article 2.12 (Merchandise Processing Fee).

Chapter Four of the AFTA sets forth provisions relating to trade in textile and apparel goods between Australia and the United States under the AFTA. Section A of Chapter Five of the AFTA sets forth the rules for determining whether an imported good is an originating good of the United States or Australia and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment under the AFTA as specified in the Agreement and the HTSUS.

Under AFTA Article 5.1 of Chapter Five (Originating Goods) and section 203(b) of the Act, originating goods may be grouped in four broad categories: (1) Goods that are wholly obtained or produced entirely in one or both of the Parties; (2) goods that are produced entirely in one or both of the Parties and that satisfy the product-specific rules of origin in AFTA Annex 4-A (Textile or Apparel Specific Rules of Origin) or Annex 5-A (Specific Rules of Origin); (3) goods that are produced entirely in the territory of one or both of the Parties

exclusively from originating materials; and (4) goods that otherwise qualify as originating goods under Chapter 4 or 5 of the AFTA. AFTA Article 5.2 (section 203(c) of the Act) provides a *de minimis* criterion. AFTA Article 5.3 (section 203(d) of the Act) allows production that takes place in the territory of both Parties to be accumulated such that, provided other requirements are met, the resulting good is considered originating. AFTA Article 5.4 (section 203(e) of the Act) sets forth the methods for calculating the regional value content of a good. AFTA Article 5.5 (section 203(f) of the Act) sets forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the *de minimis* criterion. The remaining Articles within Section A of Chapter Five consist of additional subrules, applicable to the originating good concept, involving: Accessories, Spare Parts and Tools (Article 5.6; section 203(g) of the Act); Fungible Goods and Materials (Article 5.7; section 203(h) of the Act); Packaging Materials and Containers for Retail Sale (Article 5.8; section 203(i) of the Act); Packing Materials and Containers for Shipment (Article 5.9; section 203(j) of the Act); Indirect Materials (Article 5.10; section 203(k) of the Act); and Third Country Transportation (Article 5.11; section 203(1) of the Act (Third Country Operations)). The basic rules of origin in Chapter Five of the AFTA are set forth in General Note 28, HTSUS, and reflected in the AFTA implementing regulations.

Section B of Chapter Five sets forth procedures that apply under the AFTA in regard to claims for preferential tariff treatment. Section C sets forth consultation mechanisms between the Parties. Section D discusses the use of the Harmonized System and generally accepted accounting principles in determining whether a good is originating under the AFTA. Finally, Section E lists the definitions to be used within the context of the rules of origin in the Chapter.

Chapter Six of the AFTA sets forth operational provisions related to customs administration under the AFTA.

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

Discussion of Amendments

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding references to certain goods originating in Australia for which, like goods originating in Canada, Mexico, Singapore, Chile, Morocco, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, Peru, the Republic of Korea, or Colombia, no bond or other security will be required when imported temporarily for prescribed uses. The provisions of AFTA Article 2.5 (Temporary Admission of Goods) are already reflected in existing temporary importation bond or other provisions contained in Part 10 of the CBP regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart L

General Provisions

Section 10.721 outlines the scope of new Subpart L, Part 10 of the CBP regulations. This section also clarifies that, except where the context otherwise requires, the requirements contained in Subpart L, Part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP regulations. Thus, for example, the specific merchandise entry requirements contained in Subpart L, Part 10 are in addition to the basic entry requirements contained in Parts 141-143 of the CBP regulations.

Section 10.722 sets forth definitions of common terms used within Subpart L, Part 10. Although the majority of the definitions in this section are based on definitions contained in Article 1.2 and Annex 1-A of the AFTA, and section 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions that apply in a more limited Subpart L, Part 10 context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.723 sets forth the procedure for claiming AFTA preferential tariff treatment at the time of entry and, as provided in AFTA Article 5.12, states that an importer may make a claim for AFTA preferential treatment based on the importer's knowledge or on information in the importer's possession that the good qualifies as an originating good. Section 10.723 also provides, consistent with AFTA

Article 5.13, that an importer must promptly and voluntarily correct an invalid claim for preferential tariff treatment in order to avoid being subject to penalties.

Section 10.724, which is based on AFTA Article 5.12, requires a U.S. importer, upon request, to submit a supporting statement setting forth the reasons that the good qualifies as an AFTA originating good in connection with the claim. Included in § 10.724 is a provision that the supporting statement may be used either for a single importation or for multiple importations of identical goods.

Section 10.725 sets forth certain importer obligations regarding the truthfulness of information and documents submitted in support of a claim for preferential tariff treatment. Section 10.726 provides that the importer's supporting statement is not required for certain non-commercial or low-value importations.

Section 10.727 implements AFTA Article 5.14 concerning the maintenance of relevant records regarding the imported good.

Section 10.728, which is based on AFTA Article 5.13, authorizes the denial of AFTA tariff benefits if the importer fails to comply with any of the requirements under Subpart L, Part 10, CBP regulations.

Rules of Origin

Sections 10.729 through 10.741 provide the implementing regulations regarding the rules of origin provisions of General Note 28, HTSUS, Chapters Four and Five of AFTA, and section 203 of the Act.

Definitions

Section 10.729 sets forth terms that are defined for purposes of the rules of origin as found in section 203(n) of the Act and other definitions that have been included to clarify the application of the regulatory texts.

General Rules of Origin

Section 10.730 sets forth the basic rules of origin established in Article 5.1 of the AFTA, section 203(b) of the Act, and General Note 28(b), HTSUS. The provisions of § 10.730 apply both to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under General Note 28, HTSUS.

Section 10.730(a), reflecting section 203(b)(1) of the Act, specifies those goods that are originating goods because they are wholly obtained or produced entirely in the territory of one or both of the Parties.

Section 10.730(b), reflecting section 203(b)(2) of the Act, provides that goods that have been produced entirely in the territory of one or both of the Parties so that each non-originating material undergoes an applicable change in tariff classification and satisfies any applicable regional value content or other requirement set forth in General Note 28(n) are originating goods. Essential to the rules in § 10.730(b) are the specific rules of General Note 28(n), HTSUS, which are incorporated by reference.

Section 10.730(c), reflecting section 203(b)(3) of the Act, provides that goods that have been produced entirely in the territory of one or both of the Parties exclusively from originating materials are originating goods. Under § 10.730(d), which implements section 203(b)(4) of the Act, goods are considered originating goods if they otherwise qualify as originating goods under General Note 28, HTSUS.

Textile and Apparel Goods Classifiable as Goods Put Up in Sets

Section 10.731, which is based on AFTA Article 4.2.8, provides that, notwithstanding the specific rules of General Note 28(n), HTSUS, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not qualify as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 percent of the value of the set.

De Minimis

Section 10.732, as provided for in AFTA Article 5.2 and section 203(c) of the Act, sets forth *de minimis* rules for goods that may be considered to qualify as originating goods even though they fail to qualify as originating goods under the rules in § 10.730. There are a number of exceptions to the *de minimis* rule set forth in the AFTA Annex 5-A (exceptions to Article 5.2) as well as a separate rule for textile and apparel goods.

Accumulation

Section 10.733, which is derived from AFTA Article 5.3 and section 203(d) of the Act, sets forth the rule by which originating materials from the territory of Australia or the United States that are used in the production of a good in the territory of the other country will be considered to originate in the territory of such other country. In addition, this section also establishes that a good that is produced by one or more producers in the territory of Australia or the United

States, or both, is an originating good if the good satisfies all of the applicable requirements of the rules of origin of the AFTA.

Value Content

Section 10.734 reflects AFTA Article 5.4 and section 203(e) of the Act concerning the basic rules that apply for purposes of determining whether an imported good satisfies a minimum regional value content (“RVC”) requirement. Section 10.735, reflecting AFTA Article 5.5 and section 203(f) of the Act, sets forth the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the *de minimis* rules.

Accessories, Spare Parts, or Tools

Section 10.736, as set forth in AFTA Article 5.6 and section 203(g) of the Act, specifies the conditions under which a good’s standard accessories, spare parts, or tools are: (1) Treated as originating goods; and (2) disregarded in determining whether all non-originating materials undergo an applicable change in tariff classification under General Note 28(n), HTSUS.

Fungible Goods and Materials

Section 10.737, as provided for in AFTA Article 5.7 and section 203(h) of the Act, sets forth the rules by which “fungible” goods or materials may be claimed as originating.

Packaging Materials and Packing Materials

Sections 10.738 and 10.739, which are derived from AFTA Articles 5.8 and 5.9 and sections 203(i) and (j) of the Act, respectively, provide that retail packaging materials and packing materials for shipment are to be disregarded with respect to their actual origin in determining whether nonoriginating materials undergo an applicable change in tariff classification under General Note 28(n), HTSUS. These sections also set forth the treatment of packaging and packing materials for purposes of the regional value content requirement of the note.

Indirect Materials

Section 10.740, as set forth in AFTA Article 5.10 and section 203(k) of the Act, provides that indirect materials, as defined in § 10.729(h), are considered to be originating materials without regard to where they are produced.

Third Country Transportation

Section 10.741, which is derived from AFTA Article 5.11 and section 203(1) of the Act, sets forth the rule that an originating good loses its originating status and is treated as a non-originating good if, subsequent to production in the territory of one or both of the Parties that qualifies the good as originating, the good undergoes production outside the territories of the Parties.

Origin Verifications and Determinations

Section 10.742 implements AFTA Article 5.15 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to AFTA preferential tariff treatment and the application of origin determinations resulting from such verifications. This section also governs the conduct of verifications directed to producers of materials that are used in the production of a good for which AFTA preferential duty treatment is claimed.

Section 10.743, as provided for in AFTA Article 4.3 and section 206 of the Act, sets forth the verification and enforcement procedures specifically relating to trade in textile and apparel goods.

Section 10.744 also implements AFTA Articles 4.3 and 5.15 and sections 205 and 206 of the Act, and provides the procedures that apply when preferential tariff treatment is denied on the basis of an origin verification conducted under Subpart L, Part 10 of the CBP regulations.

Penalties

Section 10.745 concerns the general application of penalties to AFTA transactions and is based on AFTA Article 6.7 and section 205 of the Act.

Section 10.746 implements AFTA Article 5.13 .4 with regard to exceptions to the application of penalties in the case of an importer who promptly and voluntarily makes a corrected claim or supporting statement and pays any duties owing. The AFTA's exception to the application of penalties is contingent upon the importer correcting the claim and paying any duties owing within a period, determined by each importing Party, which may not be less than one year from submission of the invalid claim.

Section 10.747 also reflects AFTA Article 5.13.4 and section 205 of the Act, and sets forth the circumstances under which the making of a corrected claim or supporting statement by an importer will be considered to have been done "promptly and voluntarily." Corrected claims or certifications that fail to meet these requirements are not excepted from penalties, although the importer making the corrected

claim or supporting statement may, depending on the circumstances, qualify for a reduced penalty as a prior disclosure under 19 U.S.C. 1592(c)(4). Section 10.747(c) also specifies the content of the statement that must accompany each corrected claim.

Goods Returned After Repair or Alteration

Section 10.748 implements AFTA Article 2.6 regarding duty-free treatment for goods re-entered after repair or alteration in Australia.

Part 24

An amendment is made to § 24.23(c) (19 CFR 24.23(c)), which concerns the merchandise processing fee, to implement AFTA Article 2.12 and section 204 of the Act, to provide that the merchandise processing fee is not applicable to goods that qualify as originating goods under the AFTA.

Part 162

Part 162 contains regulations regarding the inspection and examination of, among other things, imported merchandise. A cross-reference is added to § 162.0 (19 CFR 162.0), which is the scope section of the part, to refer readers to the additional AFTA records maintenance and examination provisions contained in new Subpart L, Part 10, CBP regulations.

Part 163

A conforming amendment is made to § 163.1 (19 CFR 163.1) to include, as authorized by AFTA Article 5.14, the requirement that the importer maintain records and documents necessary to support a claim for preferential tariff treatment under the AFTA. Also, the list of records and information required for the entry of merchandise appearing in the Appendix to Part 163 (commonly known as the (a)(1)(A) list) is also amended to add the records and documents necessary to support an AFTA claim for preferential tariff treatment.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. The list contained in § 178.2 (19 CFR 178.2) is amended to add the information collections used by CBP to determine eligibility for a tariff preference or other rights or benefits under the AFTA and the Act.

Inapplicability of Notice and Delayed Effective Date Requirements

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

Executive Order 12866 and the Regulatory Flexibility Act

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). It has been determined that this rule is not a significant regulatory action, as defined in section 3(f) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in these regulations have previously been reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0117, which covers many of the free trade agreement requirements that CBP administers. The addition of the AFTA requirements will result in an increase in the number of respondents and burden hours for this information collection. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collections of information in these regulations are in §§ 10.723, 10.724, and 10.727. This information is required in connection with general recordkeeping requirements (§ 10.727), as well as claims for preferential tariff treatment under the AFTA and the Act and will be used by CBP to determine eligibility for tariff preference under the AFTA and the Act (§§ 10.723 and 10.724). The likely respondents are business organizations including importers, exporters and manufacturers. The burdens imposed by these regulations are:

Estimated total annual reporting burden: 4,000 hours.

Estimated number of respondents: 20,000.

Estimated annual frequency of responses per respondent: 1.

Estimated average annual burden per response: .2 hours.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

Signing Authority

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

List of Subjects

19 CFR Part 10

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

19 CFR Part 24

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

19 CFR Part 162

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

19 CFR Part 163

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

19 CFR Part 178

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

Amendments to the Regulations

For the reasons set forth above, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

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

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

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

* * * * *

Sections 10.721 through 10.748 also issued under 19 U.S.C. 1202 (General Note 28, HTSUS) and Pub. L. 108–286, 118 Stat. 919 (19 U.S.C. 3805 note).

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

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, Australia, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, Peru, the Republic of Korea, Colombia, or Panama and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 12, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, HTSUS, in the country of which the importer is a resident.

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■ 3. Add subpart L to read as follows:

Subpart L — United States-Australia Free Trade Agreement

General Provisions

Sec.

10.721 Scope.

10.722 General definitions.

Import Requirements

10.723 Filing of claim for preferential tariff treatment upon importation.

10.724 Supporting statement.

10.725 Importer obligations.

10.726 Supporting statement not required.

10.727 Maintenance of records.

10.728 Effect of noncompliance: failure to provide documentation regarding third country transportation.

Rules of Origin

10.729 Definitions.

10.730 Originating goods.

10.731 Textile and apparel goods classifiable as goods put up in sets.

10.732 De minimis.

10.733 Accumulation.

10.734 Regional value content.

10.735 Value of materials.

10.736 Accessories, spare parts, or tools.

10.737 Fungible goods and materials.

10.738 Retail packaging materials and containers.

10.739 Packing materials and containers for shipment.

10.740 Indirect materials.

10.741 Third country transportation.

Origin Verifications and Determinations

10.742 Verification and justification of claim for preferential treatment.

10.743 Special rule for verifications in Australia of U.S. imports of textile and apparel goods.

10.744 Issuance of negative origin determinations.

Penalties

10.745 General.

10.746 Corrected claim or supporting statement.

10.747 Framework for correcting claims or supporting statements.

Goods Returned After Repair or Alteration

10.748 Goods re-entered after repair or alteration in Australia.

Subpart L — United States-Australia Free Trade Agreement

General Provisions

§ 10.721 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Australia Free Trade Agreement (the AFTA) signed on May 18, 2004, and under the United States-Australia Free Trade Agreement Implementation Act (“the Act”), Pub. L. 108–286, 118 Stat. 919 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the AFTA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.722 General definitions.

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

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

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

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

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

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

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(d) *Customs Valuation Agreement*. "Customs Valuation Agreement" means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(e) *Days*. "Days" means calendar days;

(f) *Enterprise*. "Enterprise" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

(g) *Enterprise of a Party*. "Enterprise of a Party" means an enterprise constituted or organized under a Party's law;

(h) *GATT 1994*. "GATT 1994" means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the *WTO Agreement*;

(i) *Goods of a Party*. "Goods of a Party" means domestic products as these are understood in the GATT 1994 or such goods as the Parties determine under the rules of origin as applied in the normal course of trade, and includes originating goods of a Party.

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

(k) *Heading*. "Heading" means the first four digits in the tariff classification number under the Harmonized System;

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

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

(n) *Originating*. “Originating” means qualifying for preferential tariff treatment under the rules of origin set out in AFTA Chapters Four (Textiles and Apparel) and Five (Rules of Origin) and General Note 28, HTSUS;

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

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

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

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

(s) *Territory*. “Territory” means:

(1) With respect to Australia, the territory of the Commonwealth of Australia:

(i) Excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) Including Australia’s territorial sea, contiguous zone, exclusive economic zone, and continental shelf; and

(2) With respect to the United States:

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

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

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

(t) *Textile or apparel good*. “Textile or apparel good” means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as “the ATC”), which is part of the WTO Agreement;

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

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

Import Requirements

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

(a) *Claim*. An importer may make a claim for AFTA preferential tariff treatment, including an exemption from the merchandise pro-

cessing fee, based on the importer's knowledge or information in the importer's possession that the good qualifies as an originating good. The claim is made by including on the entry summary, or equivalent documentation, the letters "AU" as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(b) *Corrected claim.* If, after making the claim required under paragraph (a) of this section, the importer becomes aware that the claim is invalid, the importer must promptly and voluntarily correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.746 and 10.747 of this subpart).

§ 10.724 Supporting statement.

(a) *Contents.* An importer who makes a claim under § 10.723(a) of this subpart must submit, at the request of the port director, a supporting statement setting forth the reasons that the good qualifies as an originating good, including pertinent cost and manufacturing data. A statement submitted to CBP under this paragraph:

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

(2) Must include the following information:

(i) The legal name, address, telephone, and email address of the importer of record of the good;

(ii) The legal name, address, telephone, and email address of the responsible official or authorized agent of the importer signing the supporting statement (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone, and email address of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone, and email address of the producer of the good, if known;

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

(vi) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 28(n), HTSUS;

(vii) The applicable rule of origin set forth in General Note 28, HTSUS, under which the good qualifies as an originating good; and

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

I certify that:

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

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

The goods originated or are considered to have originated in the territory of one or more of the Parties, and comply with the origin requirements specified for those goods in the United States-Australia Free Trade Agreement; there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve the goods in good condition or to transport the goods to the United States; and

This document consists of pages, including all attachments.

(b) *Responsible official or agent.* The supporting statement required to be submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The supporting statement required to be submitted under paragraph (a) of this section must be completed in the English language.

(d) *Applicability of supporting statement.* The supporting statement required to be submitted under paragraph (a) of this section may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the statement. For purposes of this paragraph, "identical goods" means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

§ 10.725 Importer obligations.

(a) *General.* An importer who makes a claim under § 10.723(a) of this subpart:

(1) Is responsible for the truthfulness of the claim and of all the information and data contained in the supporting statement provided for in § 10.724 of this subpart; and

(2) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. If CBP requests the submission of supporting documents, CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

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

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an invalid claim for preferential tariff treatment or submitting an incorrect supporting statement, provided that the importer promptly and voluntarily corrects the claim or supporting statement and pays any duty owing (see §§ 10.746 and 10.747 of this subpart).

§ 10.726 Supporting statement not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a supporting statement under § 10.724 for:

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

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

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the AFTA, the port director will notify the importer that for that importation the importer must submit to CBP a supporting statement. The importer must submit such a statement within 30 days from the date of the notice. Failure to timely submit the supporting statement will result in denial of the claim for preferential tariff treatment.

§ 10.727 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.723(a) of this subpart must maintain, for five years after the date of importation of

the good, records and documents necessary to demonstrate that the good qualifies as an originating good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

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

§ 10.728 Effect of noncompliance; failure to provide documentation regarding third country transportation.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete supporting statement prepared in accordance with § 10.724 of this subpart, when requested, the port director may deny preferential treatment to the imported good.

(b) *Failure to provide documentation regarding third country transportation.* Where the requirements for preferential treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the AFTA, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in § 10.741 of this subpart were met.

Rules of Origin

§ 10.729 Definitions.

For purposes of §§ 10.729 through 10.741 of this subpart:

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

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

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

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

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

(2) Motor vehicles classified under subheading 8701.10 or under any of subheadings 8701.30 through 8701.90, HTSUS;

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

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

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

(d) *Fungible goods or materials*. “Fungible goods or materials” means goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical;

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

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

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

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

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

(5) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced exclusively from products referred to in paragraph (g)(5) of this section on board factory ships registered or recorded with a Party and flying its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

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

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties; or

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

(10) Recovered goods derived in the territory of one or both of the Parties from goods that have passed their life expectancy, or are no longer useable due to defects, and utilized in the territory of one or both of the Parties in the production of remanufactured goods; or

(11) Goods produced in one or both of the Parties exclusively from goods referred to in paragraphs (g)(1) through (9) of this section, or from the derivatives of such goods, at any stage of production;

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

(1) Fuel and energy;

(2) Tools, dies, and molds;

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

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

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

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

(7) Catalysts and solvents; and

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

(i) *Material*. “Material” means a good that is used in the production of another good;

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

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

(l) *Non-allowable interest costs*. “Nonallowable interest costs” means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rates for comparable maturities of the United States or Australia;

(m) *Non-originating good or non-originating material*. “Non-originating good” or “non-originating material” means a good or material, as the case may be, that does not qualify as originating under General Note 28, HTSUS, or this subpart;

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

(o) *Producer*. “Producer” means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles or disassembles a good;

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

(q) *Reasonably allocate*. “Reasonably allocate” means to apportion in a manner that would be appropriate under generally accepted accounting principles;

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

(1) The complete disassembly of goods which have passed their life expectancy, or are no longer useable due to defects, into individual parts; and

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

(s) *Remanufactured good*. “Remanufactured good” means an industrial good assembled in the territory of a Party that is classified in

Chapter 84, 85, or 87, or heading 9026, 9031, or 9032, HTSUS, other than a good classified in heading 8418 or 8516 or any of headings 8701 through 8706, HTSUS, and that:

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

(2) Has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(3) Enjoys a factory warranty similar to a like good that is new;

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

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

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

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

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

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

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

(4) Recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers’ employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

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

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

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

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

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

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

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

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

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

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

§ 10.730 Originating goods.

Except as otherwise provided in this subpart and General Note 28, HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the AFTA only if:

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

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

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 28(n), HTSUS;

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 28(n), HTSUS; or

(3) The good meets any other requirements specified in General Note 28(n), HTSUS;

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

(d) The good otherwise qualifies as an originating good under General Note 28(n), HTSUS.

§ 10.731 Textile and apparel goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 28(n), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 percent of the value of the set.

§10.732 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 28(n), HTSUS, is an originating good if:

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

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 28(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 28, HTSUS.

(b) Paragraph (a) does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in one of the following HTSUS provisions: subheading 1901.10, 1901.20 or 1901.90; heading 2105; or subheading 2106.90, 2202.90 or 2309.90;

(3) A non-originating material provided for in heading 0805, HTSUS, or subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in subheadings 2009.11 through 2009.39, HTSUS, or in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514 or 1515, HTSUS;

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

(6) A non-originating material provided for in Chapter 17, HTSUS, or heading 1805, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS;

(7) A non-originating material provided for in headings 2203 through 2208, HTSUS, that is used in the production of a good provided for in heading 2207 or 2208, HTSUS; or

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined.

(c) A textile or apparel good provided for in Chapters 42, 50 through 63, 70, or 94, HTSUS, that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 28(n), HTSUS, will nevertheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component. Notwithstanding the preceding sentence, a textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered an

originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term “component of the good that determines the tariff classification of the good” means all of the fibers in the yarn, fabric, or group of fibers.

§ 10.733 Accumulation.

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

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.730 of this subpart and all other applicable requirements of General Note 28, HTSUS.

§ 10.734 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 28(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

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

(c) *Build-up method.* Under the buildup method, the regional value content must be calculated on the basis of the formula $RVC = (VOM / AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods—(1) General.* Where General Note 28(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), or any of headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good must be calculated by the importer, ex-

porter, or producer of the good on the basis of the net cost methods described in paragraphs (d)(2) through (4) of this section.

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

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

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

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

(3) *Motor vehicles—(i) General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of a Party.

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

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

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

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

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

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

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

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

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

10.735 Value of materials.

(a) *Calculating the value of materials*. For purposes of calculating the regional value content of a good under General Note 28(n), HTSUS, and for purposes of applying the *de minimis* (see § 10.732 of this subpart) provisions of General Note 28(n), HTSUS, the value of a material is:

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

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an impor-

tation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for exportation to the country of importation); or

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

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

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

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

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

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for exportation to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, the price paid by the producer should be modified so that the value is the transaction value of identical goods sold within Australia at or about the same time the goods were sold to the producer in Australia. Thus, if the seller of material x also sold an identical material to another buyer in Australia without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials—(1) Additions to originating materials.* For originating

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

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

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

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

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

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

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

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

(iv) The cost of processing incurred in the territory of one or both of the Parties in the production of the non-originating material; and

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

(d) *Accounting method.* Any cost or value referenced in General Note 28, HTSUS, and this subpart, must be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced.

§ 10.736 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 28(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are not invoiced separately from the good; and

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

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.734 of this subpart.

§ 10.737 Fungible goods and materials.

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

(1) Averaging;

(2) “Last-in, first-out;”

(3) “First-in, first-out;” or

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

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

§ 10.738 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the AFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 28(n), HTSUS.

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

Example 1. Australian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.735(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is \$10. Good C has

a regional value content requirement. The United States importer of good C decides to use the build-down method, $RVC = ((AV-VNM)/AV) \times 100$ (see § 10.734(b) of this subpart). in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their \$10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, $RVC = (VOM/AV) \times 100$ (see § 10.734(c) of this subpart). the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.739 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.729 (n) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 28(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in § 10.729(n) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Australian Producer A produces good C. Producer A ships good C to the U.S. in a shipping container which it purchased from Company B in Australia. The shipping container is originating. The value of the shipping container determined under section § 10.735(a)(2) of this subpart is \$3. Good C is subject to a regional value content requirement. The transaction value of good C is \$100, which includes the \$3 shipping container. The United States importer decides to use the build-up method, $RVC = (VOM/AV) \times 100$ (see § 10.734(c) of this subpart). in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted

value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a \$3 deduction for the value of the shipping container. Therefore, the AV is \$97 (\$100 -\$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.740 Indirect materials.

An indirect material, as defined in § 10.729(h) of this subpart, will be considered to be an originating material without regard to where it is produced, and its value will be the cost registered in the accounting records of the producer of the good.

Example. Australian Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.730(b)(1) of this subpart and General Note 28(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.741 Third country transportation.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under § 10.730 of this subpart will not be considered an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of the Parties. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

Origin Verifications and Determinations

§ 10.742 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 10. 723(a) of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may be conducted by means of one or more of the following:

- (1) Requests for information from the importer;
- (2) Written requests for information to the exporter or producer;
- (3) Requests for the importer to arrange for the exporter or producer to provide information directly to CBP;
- (4) Visits to the premises of the exporter or producer in Australia, in accordance with procedures that the Parties adopt pertaining to the verification; and

(5) Such other procedures as the Parties may agree.

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

§ 10.743 Special rule for verifications in Australia of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of Australia conduct a verification, regardless of whether a claim is made for preferential tariff treatment. While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action which may include suspending the application of preferential tariff treatment to the textile or apparel good for which a claim of origin has been made. If an exporter, producer, or other person refuses to consent to a visit as provided for in this paragraph, or if CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, or CBP makes a negative determination, CBP, if directed by the President, may take appropriate action which may include denying the application of preferential tariff treatment to the textile or ap-

parel good subject to the verification, and to similar goods exported or produced by the entity that exported or produced the good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures in cases in which CBP has a reasonable suspicion that an Australian exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of Australia conduct a verification, regardless of whether a claim is made for preferential tariff treatment. A “reasonable suspicion” for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 6.5 of the AFTA, which indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action which may include suspending the application of preferential tariff treatment to the textile and apparel goods exported or produced by the Australian entity where the reasonable suspicion of unlawful activity relates to those goods. If an exporter, producer, or other person refuses to consent to a visit as provided for in this paragraph, or if CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, or makes a negative determination, CBP, if directed by the President, may take appropriate action which may include denying the application of preferential tariff treatment to any textile or apparel goods exported or produced by the entity subject to the verification.

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

(d) *Treatment of documents and information provided to CBP.* Any production, trade and transit documents and other information necessary to conduct a verification under this section, provided to CBP by the government of Australia consistent with the laws, regulations, and procedures of Australia, will be treated as confidential in accordance with Article 22.4 of the AFTA (Disclosure of Information).

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it

receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

§ 10.744 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.723(a) of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

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

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

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 28, HTSUS, and in §§ 10.729 through 10.741 of this subpart, the legal basis for the determination.

Penalties

§10.745 General.

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

§ 10.746 Corrected claim or supporting statement.

An importer who makes a corrected claim under § 10.723(b) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect supporting statement, provided that the corrected claim or supporting statement is promptly and voluntarily made pursuant to the terms set forth in § 10.747 of this subpart.

§ 10.747 Framework for correcting claims or supporting statements.

(a) *“Promptly and voluntarily” defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or supporting statement will be deemed to have been done promptly and voluntarily if:

(1)(i) Done within one year following the date on which the importer made the incorrect claim; or

(ii) Done later than one year following the date on which the importer made the incorrect claim, provided the corrected claim is made:

(A) Before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(B) Before any of the events specified in § 162.74(i) of this chapter have occurred; or

(C) Within 30 days after the importer initially becomes aware that the incorrect claim is not valid; and

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

(3) Accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

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

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

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

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

(2) Identifies each affected import transaction, including each port of importation and the approximate date of each importation;

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

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

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within one (1) year thereafter, or

within any extension of that 1-year period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

Goods Returned After Repair or Alteration

§ 10.7 48 Goods re-entered after repair or alteration in Australia.

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

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

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

PART 24 — CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

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

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

* * * * *

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

* * * * *

■ 5. Section 24.23 is amended by redesignating paragraphs (c)(8) through (14) as paragraphs (c)(9) through (15), and adding a new paragraph (c)(8) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(8) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 203 of the United States-Australia Free Trade Agreement Implementation Act (*see also* General Note 28, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005.

PART 162 — INSPECTION, SEARCH, AND SEIZURE

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

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

* * * * *

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

§ 162.0 Scope.

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

PART 163 — RECORDKEEPING

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

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

* * * * *

■ 9. Section 163.1 is amended by redesignating paragraphs (a)(2)(ix) through (xvii) as paragraphs (a)(2)(x) through (xviii), and adding a new paragraph (a)(2)(ix) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(ix) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Australia Free Trade Agreement (AFTA), including an AFTA importer’s supporting statement.

* * * * *

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

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

* * * * *

IV. * * *

§ 10.723–10.727 AFTA records that the importer may have in support of an AFTA claim for preferential tariff treatment, including an importer’s supporting statement.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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

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

■ 12. Section 178.2 is amended by adding new listings for “§§ 10.723 and 10.724” to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*
§§10.723 and 10.724.....	Claim for preferential tariff treatment under the US-Australia Free Trade Agreement	1651-0117
*	*	*

* * * * *

R. GIL KERLIKOWSKE,
Commissioner.

Dated: February 5, 2015.

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

19 CFR PARTS 7, 163, AND 178
DEC. 15-04

**DOCUMENTATION RELATED TO GOODS IMPORTED
FROM U.S. INSULAR POSSESSIONS**

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

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to eliminate the requirement that a customs official at the port of export verify and sign CBP Form 3229, Certificate of Origin for U.S. Insular Possessions, and to require only that the importer present this form, upon CBP’s request, rather than with each entry as is currently required. The importer is still required to maintain CBP Form 3229 in its possession or may be subject to the assessment of a recordkeeping penalty if it cannot be produced.

DATES: Effective March 13, 2015.

FOR FURTHER INFORMATION CONTACT: Seth Mazze, Trade Agreements Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6567, seth.mazze@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

On January 14, 2014, U.S. Customs and Border Protection (CBP)

published a notice of proposed rulemaking (NPRM) in the **Federal Register** (79 FR 2395) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) to eliminate the requirement that a customs official at the port of export verify and sign CBP Form 3229, Certificate of Origin for U.S. Insular Possessions, and to require only that the importer present this form, upon CBP's request, rather than with each entry as is currently required. Goods imported into the customs territory of the United States from an insular possession may be eligible for duty-free treatment under the provisions of General Note 3(a)(iv) of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). In addition to the specific requirements set forth in General Note 3(a)(iv), HTSUS, the CBP regulations at part 7 of title 19 of the Code of Federal Regulations (19 CFR part 7) address insular possessions.

This rule also adopts nonsubstantive, editorial amendments to update the outdated name of the Form which appears in the list of records and information required for the entry of merchandise in the Appendix to part 163 (commonly referred to as the "(a)(1)(A)" list) by amending the listing within section IV for section 7.3(f) to reflect the current name of the form from "CF 3229" to "CBP Form 3229". Lastly, this rule makes editorial changes to the sample declarations made by the shipper in the insular possession and by the importer in the United States by updating the year from the 20th Century, "19__." to the 21st Century, "20__" in 19 CFR 7.3(f)(2).

The NPRM solicited for public comments on the proposed rulemaking. The public comment period closed on March 17, 2014.

Discussion of Comments

Five comments were received in response to the solicitation of public comments in the proposed rule. All commenters expressed support for the proposed amendments indicating an expected savings in time and cost as a result of "streamlining" the process by eliminating the requirement that a customs official at the port of export verify and sign CBP Form 3229, Certificate of Origin for U.S. Insular Possessions. In addition, two commenters stated that potential recordkeeping penalties would be an effective deterrent against false claims.

Conclusion

After review of the comments, and in light of the fact that all comments submitted were positive, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (79 FR 2395) on January 14, 2014. In accordance with Executive Orders 13563 and 13610, this rule streamlines CBP's regulations by lessening the burden in achieving its regulatory objectives.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

Regulatory Flexibility Act

This section examines the impact on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This final rule removes the requirements that an importer present a completed CBP Form 3229 with each shipment from an insular possession. Once the rule is effective, the importer will only be required to present a completed CBP Form 3229 upon CBP’s request. The importer will still be required to maintain a completed CBP Form 3229 in its records in accordance with applicable record keeping requirements. In addition to this rule’s impact on importers, this rule removes the requirement that the shipper of a good from an insular possession obtain a customs official’s signature and date of signature in order to complete a CBP Form 3229.

In the NPRM, using internal databases, CBP found that from fiscal year (FY) 2007 through FY 2012, on average, there have been approximately 3,545 shipments of goods each year, imported by approximately 135 importers, from insular possessions (see Table 1). CBP has since obtained an additional year of data (FY 2013). By incorporating these data CBP estimates, on average, the number of shipments of goods and the number of importers each year are 3,256 and 126, respectively.

Any importer that imports goods from an insular possession will need to comply with this rule. Therefore, CBP believes that this rule has an impact on a substantial number of small importers. Although this rule may have an effect on a substantial number of importers,

CBP believes that the economic impact of this rule will not be significant. Because importers will be required to present a completed CBP Form 3229 to CBP only upon request by a CBP officer rather than with each shipment from an insular possession, CBP estimates that an average importer may, at a maximum, print approximately 26 fewer CBP Form 3229s annually (this value has not changed with the additional that this maximum benefit realized will year of data). While this would be a positive economic impact, CBP believes that this maximum benefit realized will be negligible.

TABLE 1—COMPLETED CBP FORMS 3229

Fiscal year	Importers	Completed 3229s
2007	191	7,258
2008	188	4,980
2009	136	3,210
2010	97	2,183
2011.....	110	1,897
2012	89	1,744
2013	72	1,518
<i>Average</i>	<i>126</i>	<i>3,256</i>

Source: Internal CBP databases.

As noted previously, CBP has found that over the last seven fiscal years, there have been an average of 3,256 shipments a year of goods to the United States from insular possessions (see Table 1). Due to data limitations, however, CBP is unable to identify the number of shippers that ship these shipments to the United States. Any shipper that ships goods to the United States from an insular possession would need to comply with this rule. Therefore, CBP believes this rule has an impact on a substantial number of small shippers shipping goods from insular possessions. Although CBP believes this rule may affect a substantial number of shippers, CBP does not believe that this rule will have a significant impact on shippers. CBP estimates that it takes a shipper, on average, approximately one hour to obtain a customs official's signature and date of signature, in order to complete CBP Form 3229.¹ During the comment period for the proposed rule, one commenter (out of five total comments received) confirmed CBP's estimate of one hour to visit a customs official in order to complete CBP Form 3229. As such, CBP estimates that shippers shipping goods from an insular possession, including any small enti-

¹ This time burden differs from Paperwork Reduction Act (PRA) burden because the PRA burden is for completing the form and does not account for travel time.

ties, will realize time burden reduction (*i.e.*, time savings) of one hour per shipment. In the NPRM, CBP estimated the average wage of a shipper's employee who is responsible for completing the form to be approximately \$45.10 per hour. Using the latest figures from the Bureau of Labor Statistics, CBP now estimates that the wage of a shipper's employee who is responsible for CBP Form 3229 to be \$47.86. Thus, CBP estimates that each shipper, including any small entities, will save approximately \$47.86 per shipment. CBP does not believe a savings of \$47.86 per shipment to be a significant economic impact.

Although CBP believes that a substantial number of small entities, both importers and shippers, may be affected by this rule, CBP does not believe that the economic impacts will be significant. CBP notes, however, that the economic impact of this rule is purely beneficial and will result in a small cost savings to both importers and exporters. CBP did not receive any comments during the NPRM that would contradict this conclusion. Accordingly, CBP certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information in this document along with proposed revisions to CBP Form 3229, Certificate of Origin, will be submitted for OMB review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0016. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collections of information in these regulations are contained in 19 CFR 7.3(f) and currently set forth in CBP Form 3229, Certificate of Origin. This information is required at the time of entry and is used by CBP to verify the goods are eligible for duty-free treatment under General Note 3(a)(iv), HTSUS.

The regulations and changes to CBP Form 3229 will reduce the estimated time burden on shippers by two minutes per completed form. Shippers currently spend an estimated 22 minutes completing CBP Form 3229, Certificate of Origin. The regulations and changes to CBP Form 3229 will reduce this time to an estimated 20 minutes to complete the form. The time savings comes as a result of the elimination of the customs officer signature requirement on the form.

The likely respondents are businesses which import from U.S. insular possessions. Such imports are predominantly petroleum, refined in St. Croix, U.S. Virgin Islands. Other such imports include

tuna fish, watches, organic chemicals, and alcohol. The estimated average annual burden associated with the collection of information in this final rule is 746 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

Signing Authority

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

List of Subjects

19 CFR Part 7

American Samoa, Customs duties and inspection, Guam, Midway Islands, Puerto Rico, Wake Island.

19 CFR Part 163

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

19 CFR Part 178

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

Amendments to the CBP Regulations

For the reasons set forth above, parts 7, 163, and 178 of title 19 of the Code of Federal Regulations (19 CFR parts 7, 163, and 178) are amended as set forth below.

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

■ 1. The general and specific authority citations for part 7 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

■ 2. In §7.3:

■ a. Paragraphs (b) introductory text, (d) introductory text, (e)(1) introductory text, and (e)(2) are amended by removing the word “shall” and adding in its place the word “will”.

■ b. Paragraph (f)(1) is revised.

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

■ d. Paragraphs (f)(2)(i) and (ii) are amended by removing the year designation “19__” wherever it appears and adding in its place the year designation “20__”.

The revision reads as follows:

§ 7.3 Duty-free treatment of goods imported from insular possessions of the United States other than Puerto Rico.

* * * * *

(f) *Documentation.* (1) When goods are sought to be admitted free of duty as provided in paragraph (a)(1) of this section, an importer must have in his possession at the time of entry or entry summary a completed certificate of origin on CBP Form 3229, showing that the goods comply with the requirements for duty-free entry set forth in paragraph (a)(1) of this section. The importer must provide CBP Form 3229 upon request by the port director or his delegate. Except in the case of goods which incorporate a material described in paragraph (c)(3)(ii) of this section, a certificate of origin will not be required for any shipment eligible for informal entry under § 143.21 of this chapter or in any case where the port director is otherwise satisfied that the goods qualify for duty-free treatment under paragraph (a)(1) of this section.

* * * * *

PART 163—RECORDKEEPING

■ 3. The authority citation for part 163 continues to read as follows:

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

* * * * *

Appendix to Part 163 [Amended]

■ 4. In the Appendix to part 163, within section IV, the listing for § 7.3(f) is amended by removing the abbreviation “CF” and adding, in its place, the words “CBP Form”.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 5. The authority citation for part 178 continues to read as follows:

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

■ 6. In § 178.2, the table is amended by revising the listings for § 7.3 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
*	*	*
§ 7.3.....	Claim for duty-free entry of goods imported from U.S. insular possessions.	1651-0116
*	*	*

* * * * *

Dated: February 5, 2015.

R. GIL KERLIKOWSKIE,
Commissioner,
U.S. Customs and Border Protection.
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

GRANT OF “LEVER-RULE” PROTECTION

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

ACTION: Notice of grant of “Lever-rule” protection.

SUMMARY: Pursuant to 19 CFR §133.2(f), this notice advises interested parties that CBP has granted “Lever-rule” protection to Intel Corporation’s “Intel & Design,” “INTEL,” and “I (Stylized)” trademarks. Notice of the receipt of an application for “Lever-rule” pro-

tection was published in the April 30, 2014 issue of the *Customs Bulletin*.

FOR FURTHER INFORMATION CONTACT: G. Gharib, Intellectual Property Rights Branch, Regulations & Rulings, (202) 325-0216.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR §133.2(f), this notice advises interested parties that CBP has granted “Lever-rule” protection for imported integrated circuits intended for sale in the United States, bearing the “Intel & Design” word and design (CBP Rec. No. TMK 10-00527), the “INTEL” word (CBP Rec. No. TMK 13-00761), and the “I” (stylized) (CBP Rec. No. TMK 07-00755) trademarks owned by Intel Corporation, which also bear the designations “ES,” “Engineering Sample,” “Intel Confidential,” or a product code commencing with a “Q.”

In accordance with the holding of *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993), CBP has determined that the gray market integrated circuits differ physically and materially from their correlating integrated circuit products authorized for sale in the United States with respect to the following product characteristics: circuitry, functionality, regulatory requirements, and warranty.

ENFORCEMENT

Importation of the above referenced integrated circuits, not intended for sale in the United States is restricted, *unless* the labeling requirements of 19 CFR §133.23(b) are satisfied.

Dated: February 9, 2015

CHARLES R. STEUART,
Chief
Intellectual Property Rights Branch

GENERAL NOTICE

19 CFR PART 177

**PROPOSED REVOCATION OF RULING LETTERS AND
MODIFICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF TRUCK TENTS**

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

ACTION: Notice of proposed revocation of a ruling letter and modification of treatment concerning the tariff classification of “truck tents”.

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 proposes to revoke three ruling letters pertaining to the tariff classification of truck tents, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before March 27, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE., 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at U.S. Customs and Border Protection, 90 K Street NE, 10th floor 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: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–7799.

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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke three ruling letters pertaining to the classification of truck tents. Although in this notice CBP is specifically referring to NY F83566, dated March 27, 2000, NY H80029, dated April 26, 2001, and NY 818424, dated February 21, 1996, (Attachments A through 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 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, as amended (19 U.S.C. 1625(c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the Harmonized Tariff Schedule of the United States. 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 F83566, dated March 27, 2000, set forth as Attachment A to this document, CBP classified a fiberglass and cloth carrier for the roof of a car under subheading 8708.29.5060, HTSUS, which provides for Parts and accessories of the motor vehicles of heading 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other...Other.

In NY H80029, dated April 26, 2001, set forth as Attachment B to this document, CBP classified a collapsible nylon tent with aluminum

poles, called an “Adventure Truck Tent” under subheading 8708.29.5060, HTSUS, which provides for Parts and accessories of the motor vehicles of heading 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other...Other.

And, in NY 818424, dated February 21, 1996, set forth as Attachment C to this document, CBP classified a plastic tent, used to cover the bed of a pickup truck so as to provide cover over a sleeping area in the truck bed under subheading 8708.29.5060 HTSUS, which provides for Parts and accessories of the motor vehicles of heading 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other...Other.

It is now CBP’s position that these tents are properly classified under subheading 6306.22.9030, HTSUS which provides for tents: of synthetic fibers: Other, other.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY F83566, NY H80029, and NY 818424, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 242603, which is set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: February 4, 2015

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY F83566

March 27, 2000

CLA-2-87:RR:NC:MM:101 F83566

CATEGORY: Classification

TARIFF NO.: 8708.29.5060

MR. RICHARD HASLACHER

LOFTY SHELETTERS

444 LASSEN ST. #3

LOS ALTOS, CALIFORNIA 94022

RE: The tariff classification of a Fiberglass and Cloth Carrier for the Roof of a Car from Italy

DEAR MR. HASLACHER:

In your letter dated February 17, 2000 you requested a tariff classification ruling.

You submitted fabric samples and brochures depicting various styles of a Fiberglass and Cloth Carrier for the Roof of a Car. This item opens up to provide a place to sleep above the ground. You state that you refer to it as a tent for marketing reasons but that it is not designed for use on the ground but rather to increase the functionality of a car or truck. The products are designed to be used above the roof of a car. The Maggiolina, Columbus, and Over Camp models are designed for storage of camping equipment when in transit. The top must remain closed while in motion. There is a seal between the two fiberglass shells that keep water and dirt from entering. When the vehicle is parked, a person can open the Maggiolina or Columbus, take out the ladder and camping gear and use it as a protected place to sleep.

The applicable subheading for the Fiberglass and Cloth Carrier for the Roof of a Car will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other...Other. The rate of duty will be 2.5% 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 Robert DeSoucey at 212-637-7035.

Sincerely,

ROBERT B. SWIERUPSKI

*Director,**National Commodity Specialist Division*

[ATTACHMENT B]

NY H80029

April 26, 2001

CLA-2-87:RR:NC:MM:101 H80029

CATEGORY: Classification

TARIFF NO.: 8708.29.5060

MR. LEE B. CARGILL
ENEL COMPANY
1330 ORANGE AVENUE, SUITE 300
CORONADO, CALIFORNIA 92118

RE: The tariff classification of the “Adventure Truck Tent” from China

DEAR MR. CARGILL:

In your letter dated April 5, 2001 you requested a tariff classification ruling.

You submitted photographs of the “Adventure Truck Tent”, that is made of Nylon. The collapsible tent poles are made of aluminum. You state that the tent, when not in use, fits in a small bag about 22 inches long and weighs about 11 lbs. The primary use of the tent is for use in the bed of a pickup truck.. You suggest that the “Adventure Truck Tent” might be classified under HTS 6306.22.1000, which provides for Backpacking tents of synthetic fibers, dutiable at 1.4% ad valorem.

We disagree with your propose classification because the primary use for the “Adventure Truck Tent” is an accessory for a Pickup truck.

The applicable subheading for the “Adventure Truck Tent” will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies: Other: Other...Other. The rate of duty will be 2.5% 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 Robert DeSoucey at 212-637-7035.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

NY 818424

February 21, 1996

CLA-2-87:RR:NC:MA:101 818424

CATEGORY: Classification

TARIFF NO.: 8708.29.5060

MR. SEAN CHEATHAM
SHARK ENTERPRISES
1008 E. MAIN STREET
NORMAN, OK 73071

RE: The tariff classification of a pickup truck “tent” cover from Taiwan or China.

DEAR MR. CHEATHAM:

In your letter dated January 14, 1996 you requested a tariff classification ruling.

The item is a plastic “tent” which is used to cover the bed of a pickup truck. It acts as a cover which affords a protected sleeping space in the truck bed. It cannot be used as a ground tent.

The applicable subheading for the “tent” cover will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for other automotive body parts and accessories. The rate of duty will be 2.9 percent.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-466-5667.

Sincerely,

ROGER J. SILVESTRI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

HQ H242603
CLA-2 OT:RR:CTF:TCM H242603 ERB
CATEGORY: Classification
TARIFF NO.: 6306.22.90

MR. RICHARD HASLACHER
LOFTY SHELTERS
444 LASSEN STREET #3
LOS ALTOS, CA 94022

MR. LEE B. CARGILL
ENEL COMPANY
1330 ORANGE AVENUE, SUITE 300
CORONADO, CA 92118

MR. SEAN CHEATHAM
SHARK ENTERPRISES
1008 E. MAIN STREET
NORMAN, OK 73071

RE: Revocation NY F83566; NY H80029; and NY 818424; Tariff Classification of roof and truck tents

DEAR SIRs:

This letter is in reference to New York Ruling Letter (NY) NY F83566, issued to Lofty Shelters on March 27, 2000, NY H80029, issued to ENEL Company on April 26, 2001, and NY 818424, issued to Shark Enterprises on February 21, 1996. Each regarded a truck tent and U.S. Customs and Border Protection's (CBP) classification of the merchandise in subheading 8708.29.5060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other...Other." We have reviewed these three rulings and found them to be in error. For the reasons set forth below, we hereby revoke NY F83566, NY H80029, and NY 818424.

FACTS:

In NY F83566 CBP stated the following:

You submitted fabric samples and brochures depicting various styles of a Fiberglass and Cloth Carrier for the Roof of a Car [sic]. This item opens up to provide a place to sleep above the ground. You state that you refer to it as a tent for marketed reasons but that it is not designed for use on the ground but rather to increase the functionality of a car or truck. The products are designed to be used above the roof of a car. The Maggiolina, Columbus, and Over Camp models are designed for storage of camping equipment when in transit. The top must remain closed while in motion. There is a seal between the two fiberglass shells that keep water and dirt from entering. When the vehicle is parked a person can open the Maggiolina or Columbus, take out the ladder and camping gear and use it as a protected place to sleep.

In NY H80029 CBP stated the following:

You submitted photographs of the “Adventure Truck Tent”, that is made of Nylon. The collapsible tent poles are made of aluminum. You state that the tent, when not in use, fits in a small bag about 22 inches long and weighs about 11 lbs. The primary use of the tent is for use in the bed of a pick up truck.

In NY 818424 CBP stated the following:

The item is a plastic “tent” which is used to cover the bed of a pickup truck. It acts as a cover which affords a protected sleeping space in the truck bed. It cannot be used as a ground tent.

In each ruling CBP classified the subject merchandise under subheading 8708.29.5060, HTSUS, which provides for, “Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other...Other.”

ISSUE:

Whether truck tents are properly classified in heading 8708, HTSUS, which provides for “Parts and accessories of the motor vehicles...”, or under heading 6306, HTSUS, which provides for “Tents”.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8708	Parts and accessories of the motor vehicles of heading 8701 to 8705:
* * *	
6306	Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods (con.):

Additional U.S. Rule of Interpretation 1(c) states, in relevant part:

In the absence of special language or context which otherwise requires –
 (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such a part or accessory;

Note 3 to Section XVII reads, in relevant part:

3. References in Chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at

the international level. While neither legally binding for dispositive, the ENS provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN 87.08 states:

This heading covers parts and accessories of the motor vehicles of heading 87.01 to 87.05, provided the parts and accessories fulfill both the following conditions:

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and
- (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

Parts and accessories of this heading include:

- (A) Assembled motor vehicle chassis-frames (whether or not fitted with wheels but without engines) and parts thereof (side-members, braces, cross-members; suspension mountings; supports and brackets for the coachwork, engine, running-boards, battery or fuel tanks, etc.)

EN (III)(C)(4) to Section XVII, HTSUS, states, in relevant part:

- (C) Parts and accessories covered more specifically elsewhere in the Nomenclature.

Parts and accessories, even if identifiable as for the articles of this Section, are excluded if they are covered more specifically by another heading elsewhere in the Nomenclature...

The EN for heading 6306 states, in relevant part:

- (4) Tents are shelters made of lightweight to fairly heavy fabrics of man-made fibres, cotton or blended textile materials, whether or not coated, covered or laminated, or of canvas. They usually have a single or double roof and sides or walls (single or double), which permit the formation of an enclosure. The heading covers tents of various sizes and shapes, e.g., marquees and tents for military, camping (including backpack tents), circus, beach use. They are classified in this heading, whether or not they are presented complete with their tent poles, tent pegs, guy ropes or other accessories.

In NY F83566, NY H80029, and NY 818424 CBP classified the subject merchandise in heading 8708, HTSUS, as “Parts...of motor vehicles”. However, pursuant to Additional U.S. Rule of Interpretation 1(c), and illustrated by EN (III) (C)(4) to Section XVII, if the truck tents are classifiable in heading 6306, HTSUS, then heading 8708, HTSUS, shall not prevail.

Thus, CBP’s analysis here begins with heading 6306, HTSUS. The U.S. Court of International Trade (CIT) discussed the scope of this heading in *Target Stores v. United States*, No. 06–00444 (Ct. Int’l Trade Mar. 22, 2012). In analyzing subject gazebos as tents of heading 6306, HTSUS, or structures of heading 7308, HTSUS, the CIT referenced *Ero Industries, Inc. v. United States*, 24 CIT 1175, 118 F. Supp. 2d 1356 (Ct. Int’l Trade 2000), which cited the aforementioned ENs, as well as other lexicographic definitions of the term tent. Ultimately the CIT found that tents are a collapsible shelter of

canvas or other material, stretched and sustained by poles, usually for camping outdoors (as by soldiers or vacationers); shelters supported by poles and fastened by cord to pegs driven into the ground; “shelter” as used in most definitions of “tent” refers to temporary structures used for protection against the elements. *Target Stores v. United States*, *supra*, at page 10, citing 24 CIT 1175, at 1185, 118 F. Supp. 2d at 1364.

In the instant case, the subject truck tents were designed and marketed as tents, to protect the users from the elements, and to provide temporary reprieve when the user wants outdoor shelter in connection with his or her vehicle. It meets the CIT’s definition noted above. The three tents at issue in their condition as imported and once assembled have walls which permit the formation of an enclosure *See* EN 63.06 (4). That the subject tents are used on top of a truck or vehicle does not exclude it from heading 6306, HTSUS. This conclusion is consistent with prior CBP rulings. *See* NY N238613, dated March 5, 2013 (classifying a truck-bed tent from Canada as a tent in subheading 6306.22.9030, HTSUS); NY N064199, dated June 11, 2009 (classifying a truck tent from China as a tent under subheading 6306.22.9030, HTSUS), and NY A86554, dated August 16, 1996 (classifying a tent for an automotive vehicle from Taiwan as a tent under subheading 6306.22.9030, HTSUS).

If arguendo, the subject merchandise is not excluded from heading 8708, HTSUS, by operation of Additional U.S. Rule of Interpretation 1(c), the subject tents are still not “parts” of motor vehicles. The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. *See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, (*Bauerhin*) 110 F.3d 774. The first test, articulated in *United States v. Willoughby Camera Stores*, (*Willoughby Camera*) 21 C.C.P.A. 322 (1933), requires a determination of whether the imported item is “an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby Camera*, 21 C.C.P.A. 322 at 324). The second test, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9 (1955), states that “an imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *Id.*

The subject tents are not designed or marketed as an integral, constituent or component part of the vehicle on which it is to be used. The tents are merely designed so as to take advantage of the shape of the vehicle, such that the combination of the tent and the vehicle creates a tented shelter. Furthermore, the truck tents at issue do have a separate and distinct commercial identity. They are not akin to the exemplars listed in the EN 87.08 (A), such as side-members, braces, cross-members, suspension mountings, supports and brackets for the coachwork, engine, running-boards, battery or fuel tanks, which are all affixed into or attached onto the inner workings of a motor vehicle.

Neither are they “accessories” of motor vehicles. The U.S. Court of Appeals for the Federal Circuit (CAFC) addressed the scope of accessories in *Roller-*

blade, Inc. v. United States, 282 F.3d 1349 (Fed. Cir. 2002). Citing *E.M. Chems v. United States*, 920 F.2d 910 (Fed. Cir. 1990). There, the CAFC noted that “an “accessory” must bear a direct relationship to the primary article that it accessorizes.” 282 F.3d at 1352. The truck tents at issue here do not directly affect the car or truck’s operation. As above in the parts analysis, the tents merely take advantage of the truck’s flat-bed to sit upon, it does not contribute to the safe and efficient operation of the truck, it is not necessary to enhance the truck or make it work. In fact, the truck must be parked or stopped, unmoving and not performing its essential function at a motor vehicle in order for the tents to work. It doesn’t act directly on the motor vehicle at all, the two articles (car and tent) operate independently of one another completely.

The tents are thus not “parts” nor are they “accessories” as it is understood by the HTSUS. The tents do not pass muster under EN (III)(C)(4) to Section XVII, HTSUS, which provides that parts and accessories are excluded from this heading if they are covered more specifically elsewhere in the nomenclature. This provision, read in concert with Additional U.S. Rule of Interpretation 1 (c), is clear that an *eo nomine* provision in the HSTUS takes precedence over a parts or accessories provision. In sum, the subject truck tents fits within the provision for “tents” of heading 6306, HTSUS.

HOLDING:

Under the authority of GRI 1, and additional U.S. Rule of Interpretation 1(c), the subject truck tents are classified in heading 6306, HTSUS. They are specifically provided for in subheading 6306.22.90, HTSUS, which provides for “Tents: Of synthetic fibers: Other.” The column one general rate of duty is 8.8% *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 the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY F83566, dated March 27, 2000, NY H80029, dated April 26, 2001, and NY 818242, dated February 21, 1996 are REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOICATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BERGAZID OA-4000

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment concerning the tariff classification of Bergazid OA-4000.

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 revoke one ruling letter pertaining to the tariff classification of Bergazid OA-4000, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before March 27, 2015.

ADDRESSES: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE., 10th Floor, Washington, DC 20229–1177. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–7799.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (Title VI), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are

“informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the 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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the classification of Bergazid OA-4000. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N237986, dated April 12, 2013, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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, as amended (19 U.S.C. 1625(c)(2)), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the HTSUS. Any person involved 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 N237986, CBP classified Bergazid OA-4000, a mixture of approximately 70% or more of Oleic Acid with Linoleic and Stearic Acids as the majority of the balance, in subheading 3824.90.41, HTSUS, which provides for, “Prepared binders for foundry molds or cores; chemical mixtures of fatty acid esters products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Fatty substances of animal or vegetable origin and mixtures thereof; Mixtures of fatty acid esters.”

It is now CBP’s position that this classification was in error, and the Bergazid OA-4000 is properly classified under subheading 3823.19.20, HTSUS, which provides for, “Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols: industrial monocarboxylic fatty acids; acid oils from refining: other: derived from coconut, palm-kernel or palm oil.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N237986 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H254695, (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: February 9, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N237986

April 12, 2013

CLA-2-38:OT:RR:NC:2:235

CATEGORY: Classification

TARIFF NO.: 3824.90.4140

Ms. SANDI SIEGEL
M.E. DAY & Co., INC.
700 W. VIRGINIA ST, SUITE 300
MILWAUKEE, WI 53204

DEAR Ms. SIEGEL:

RE: The tariff classification of Bergazid OA-4000 from Malaysia

In your letter dated January 09, 2013 you requested a tariff classification ruling on behalf of Berg & Schmidt America, LLC. Documentation received with your request was sent to our laboratory for review. That review is now complete and our assessment is as follows.

The instant product is called Bergazid OA-4000 (CAS# 88895-93-6). The Bergazid OA-4000 is indicated to consist of mixtures of fatty acids. It is a mixture of several unsaturated fatty acids containing predominantly Oleic Acid .

The applicable subheading for the Bergasurf OA-4000 will be 3824.90.4140, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: "Prepared binders for foundry molds or cores; chemical mixtures of fatty acid esters products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included (con.): Other (con.): Fatty substances of animal or vegetable origin and mixtures thereof; Mixtures of fatty acid esters". The general rate of duty is 4.6 percent 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 Paul Hodgkiss at (646) 733-3046.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H254695
CLA-20T:RR:CTF:TCM: H254695 ERB
CATEGORY: Classification
TARIFF NO.: 3823.19.20

Ms. SANDI SIEGEL
M.E. DAY & Co., INC.
700 W. VIRGINIA STREET, SUITE 300
MILWAUKEE, WI 53204

RE: Revocation of NY N237986; Tariff classification of Bergazid OA-4000

DEAR Ms. SIEGEL:

U.S. Customs and Border Protection (CBP) issued M.E. Day & Co., Inc. (M.E. Day & Co) New York Ruling Letter (NY) N237986 on April 12, 2013, on behalf of your client, Berg & Schmidt America, LLC. NY N237986 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of a product called Bergazid OA-4000, a mixture of approximately 70% or more of Oleic acid with Linoleic and Stearic acids as the majority of the balance.¹ We have since reviewed NY N237986 and find it to be in error with respect to the classification of the product, which is described in detail herein.

FACTS:

NY N237986 found the following:

The instant product is called Bergazid OA-4000 (CAS # 88895-93-6). The Bergazid OA-4000 is indicated to consist of mixtures of fatty acids. It is a mixture of several unsaturated fatty acids containing predominantly Oleic Acid.

The applicable subheading for the Burgasurf OA-4000² will be 3824.90.4140, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: "Prepared binders for foundry molds or cores; chemical mixtures of fatty acid esters products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included (con.): Other (con.): Fatty substances of animal or vegetable origin and mixtures thereof; Mixtures of fatty acid esters". The general rate of duty is 4.6 percent ad valorem.

¹ Oleic acid is a fatty acid that occurs naturally in various animal and vegetable fats and oils. In chemical terms it is classified as a monounsaturated omega-9 fatty acid. Linoleic acid is a polyunsaturated omega-6 fatty acid. It belongs to one of the two families of essential fatty acids, which means that the human body cannot synthesize it from other food components. Burr, G.O., Burr, M.M., and Miller, E. (1932). "On the nature and role of the fatty acids essential in nutrition." *J. Biol. Chem.* 86 (587): 1-9. Stearic acid is one of the most common saturated fatty acids found in nature, and occurs in many animal and vegetable fats and oils. It is most often found in the production of detergents, soaps and cosmetics. It is prepared by the process of saponification of fats and oils, using hot water (above 200°C) leading to the hydrolysis of triglycerides. The resulting mixture is then distilled. Commercial stearic acid is often a mixture of stearic and palmitic acids. Beare-Rogers, J.; Dieffenbacher, A; Holm, J.V. (2001). "Lexicon of lipid nutrition (IUPAC) Technical Report" *Pure and Applied Chemistry* 73 (4): 685-744.

² "Burgasurf" is a typo. The product's name is confirmed as Bergazid OA-4000.

A sample of the product was submitted to CBP for laboratory analysis. CBP Laboratory Report NY20130332 was issued March 28, 2013 and it stated the following:

Product Name: Bergazid OA-4000
 CAS#: 88895-93-6
 CAS Name: Fatty Acids, C18-UNSATD.

As per the information received, the product is a mixture of several fatty acids containing predominantly oleic acid (about 70%), with linolenic acid and stearic acid (less than 20% each) with other fatty acids in trace amounts.

Functional Groups: Mono carboxylic fatty acids, carbonyl.

In its request for reconsideration of NY N237986, M.E. Day & Co. also provided additional information regarding the Bergazid OA-4000 product. Namely, that it is composed of Oleic acid and fatty acid C18 unsaturated. It is produced from palm oil and palm kernel oil in Malaysia, and is used chiefly for food ingredients, cosmetics and cleaners, and certain technical applications. Further, M.E. Day & Co. points to N237985, dated March 2, 2013 which classified a similar product, Bergazid OA-2000, (CAS# 88895-93-6) which also consists of Oleic acid, specifically fatty acids, C-18 unsaturated, in subheading 3823.19.20, HTSUS.

ISSUE:

Whether Bergazid OA-4000 is classified as a mixture of fatty acid of heading 3823, HTSUS, or as an other chemical preparation of heading 3824, HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration in this case are as follows:

3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols:	
	Industrial monocarboxylic fatty acids; acid oils from refining:	
3823.19	Other:	
3823.19.20	Derived from coconut, palm-kernel or palm oil.	
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:	

3824.90.41

Fatty substances of animal or vegetable origin and mixtures thereof.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provides a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg 35127, 35128 (August 23, 1989).

The EN to heading 38.23 states the following in relevant part:

Industrial monocarboxylic fatty acids are generally manufactured by the saponification or hydrolysis of natural fats or oils. Separation of solid (saturated) and liquid (unsaturated) fatty acids is usually done by crystallisation either with or without solvent. The liquid part (commercially known as oleic acid or olein) consists of oleic acid and other unsaturated fatty acids (e.g. linoleic and linolenic acids) together with small amounts of saturated fatty acids. The solid part (commercially known as stearic acid or stearin) consists mainly of palmitic and stearic acids with a small portion of unsaturated fatty acids.

This heading includes, *inter alia*:

- (1) Commercial stearic acid (stearin) which is a white solid material with a characteristic odour. It is relatively hard and rather brittle and is usually marketed in the form of beads, flakes or powder. It is also marketed in liquid form when transported hot in isothermal tanks.
- (2) Commercial oleic acid (olein) which is a colourless to brown oily liquid with a characteristic odour.
- (3) Tall oil fatty acids (TOFA) which consists primarily of oleic and linoleic acid. They are obtained by the distillation of crude tall oil and contain by weight 90% or more (calculated on the weight of the dry product) of fatty acids.
- (4) Distilled fatty acids which are obtained after hydrolytic splitting of various fats and oils (e.g., coconut oil, palm oil, tallow) followed by a purification process (distillation).
- (5) Fatty acid distillate, obtained from fats and oils which have been subjected to vacuum distillation in the presence of steam as part of a refining process. Fatty acid distillate is characterised by a high free fatty acid (ffa) content.
- (6) Fatty acids obtained by catalytic oxidation of synthetic hydrocarbons of a high molecular weight.
- (7) Acid oils from refining, with a relatively high free fatty acid content, prepared by decomposing with mineral acid the soap-stock obtained during the refining of crude oils.

This heading excludes:

- (a) Oleic acid, of a purity of 85% or more (calculated on the weight of the dry product)(heading 29.16).

Heading 3824.90, HTSUS is a “basket provision,” in that it provides for products which are “not elsewhere specified or included.” Before CBP classifies a product in the basket provision heading 3824, HTSUS, classification in heading 3823, HTSUS, as an industrial monocarboxylic fatty acid must be considered.

According to the CBP laboratory report, as well as additional product information provided by M.E. Day & Co., the subject merchandise is comprised of over 70% Oleic acid with Linoleic and Stearic acids as the majority of the balance. In Headquarters Ruling (HQ) W967992, dated February 6, 2007, CBP considered the classification of a palm fatty acid distillate. The fatty free acids there included Palmitic acid (about 45–50%), Oleic acid (about 35–36%), Linoleic acid (about 8–9%), and Stearic acid (about 5–6%). The remaining components were not fatty free acids. There, CBP noted that to be considered an industrial monocarboxylic fatty acid, a product must go through an industrial process that includes fractional distillation. Further, a carboxylic acid is composed of a “broad array of organic acids” that end in a carboxyl group, and typically, a carboxylic acid includes “the large and important class of fatty acids.” *Id* citing *Hawley’s Condensed Chemical Dictionary* 223 (12th ed. 1993). A fatty acid is a “carboxylic acid derived from or contained in an animal or vegetable fat or oil.” *Hawley’s, supra*, at 507. The chemical composition of the Bergazid OA-4000 meets the definition of a monocarboxylic acids because it is a mixture of 70% monocarboxylic fatty acids derived from palm kernel or palm oil. The ENs also indicate that products including Stearic acid are classified in heading 3823, HTSUS when it states that in the separation of solid and liquid fatty acids, “The solid part (commercially known as stearic acid or stearin) consists mainly of palmitic and stearic acids with a small proportion of unsaturated fatty acids” are included *inter alia*. See EN. 3823(A).

Moreover, the ENs to heading 3823, HTSUS, support classification in that heading because it includes distilled fatty acids which are obtained after hydrolytic splitting of various fats and oils (e.g. coconut oil, palm oil, tallow) followed by distillation. Bergazid OA-4000 meets this description because the stearic acid component follows this same production process. Note, pursuant to the ENs, oleic acid of a purity of 85% or more is excluded, but that does not exclude the subject merchandise here as CBP’s laboratories found the Oleic acid component to be approximately 70%.

Furthermore, previous CBP rulings support classification of Bergazid OA-4000 in heading 3823, HTSUS. See N237985, dated March 1, 2013, which classified a substantially similar product, described as “Oleic Acid,” fatty acids, C-18, unsaturated (Bergazid OA-2000) in heading 3823, HTSUS. *And see* HQ962115, dated February 1, 1999, classifying a solution of approximately 45% stearic acid, 55% palmitic acid, and 0.1% oleic acid (also a saturated fatty acid) in heading 3823, HTSUS. Therefore, Bergazid OA-4000 is classifiable in heading 3823, HTSUS. It is specifically provided for in subheading 3823.19.20, as industrial monocarboxylic fatty acids: Other: derived from palm oil.”

HOLDING:

By application of GRI 1, the subject Bergazid OA-4000 is provided for in heading 3823, HTSUS. It is specifically provided for under subheading

3823.19.20, HTSUS, which provides for, “Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohol: Industrial monocarboxylic fatty acids; acid oils from refining: Other: Derived from coconut, palm-kernel or palm oil.” The column one, general rate of duty is 2.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N237986, dated April 12, 2013, is hereby REVOKED.

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

PROPOSED REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN “GAZEBOS”

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

ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment concerning the tariff classification of certain “gazebos.”

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 revoke two ruling letters pertaining to the tariff classification of certain “gazebos” under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before March 27, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE., 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at U.S. Customs and Border Protection, 90 K Street NE, 10th floor 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: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–7799.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (Title VI), became effective. Title VI

amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the 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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the classification of certain lightweight, outdoor canopies, referred to in the rulings as either “gazebos” or “canopy shelters.” Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N230084, dated August 29, 2012, and NY N236254, dated December 14, 2012 (Attachments A and B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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, as amended (19 U.S.C. 1625(c)(2)), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the HTSUS. Any person involved 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 N230084, dated August 29, 2012, CBP classified a gazebo under subheading 7308.90.95, HTSUS, which provides for, “Structures (excluding prefabricated buildings of heading 9406) and parts of structures...of iron or steel: Other: Other.” In NY N236254, dated December 14, 2012, CBP also classified a gazebo under 7308.90.95, HTSUS, which provides for, “Structures (excluding prefabricated buildings of heading 9406) and parts of structures...of iron or steel: Other: Other.” It is now CBP’s position that these gazebos are properly classified under subheading 3926.90.99, HTSUS, which provides for other articles of plastics.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke N230084 and N236254 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H262026, (Attachment C). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: February 9, 2015

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N230084

August 29, 2012

CLA-2-73:OT:RR:NC:1:117

CATEGORY: Classification

TARIFF NO.: 7308.90.9590

Ms. ALICE LIU
ATICO INTERNATIONAL USA, INC.
501 S. ANDREWS AVE
FT. LAUDERDALE, FL 33301

RE: The tariff classification of a gazebo from China

DEAR Ms. ALICE LIU:

In your letter dated July 31, 2012 you requested a tariff classification ruling. You submitted descriptive literature, diagrams, photographs and fabric material samples.

The product to be imported is item number A050MA00075, gazebo. The product is comprised of steel tubes weighing 4.5kgs, PE fabric at 1.2kgs and the plastic part with a weight of 0.3kgs. The steel tubes outline the frame and a fire retardant PE cover forms the roof. The PE roof is placed over the steel frame. All components will be packed in one box and assembly is required.

The applicable subheading for the gazebo will be 7308.90.9590, Harmonized Tariff Schedule of the United States (HTSUS), which provides for structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures of iron or steel: Other, Other, Other, Other, Other. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mary Ellen Laker at (646) 733-3020.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

N236254

December 14, 2012

CLA-2-73:OT:RR:NC:1:117

CATEGORY: Classification

TARIFF NO.: 7308.90.9590

MR. KIM YOUNG
BDP INTERNATIONAL INC.
2929 WALKER RD NW 2ND FLOOR
GRAND RAPIDS, MI 49544

RE: The tariff classification of a gazebo from China

DEAR MR. YOUNG:

In your letter dated December 3, 2012 you requested a tariff classification ruling on behalf of your client Meijer Distribution. You have submitted descriptive literature, diagrams, and a fabric material sample.

The product to be imported is a canopy shelter identified as model number 25757. It consists of a one piece cover, a 10' x 20' steel frame, bungee cords, footplates and spike anchors. The canopy fabric is woven of polyethylene strips that measure not over 5mm in width and is laminated on both sides with a plastic material which renders it waterproof.

The applicable subheading for the gazebo will be 7308.90.9590, Harmonized Tariff Schedule of the United States (HTSUS), which provides for structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures of iron or steel: Other, Other, Other, Other, Other. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mary Ellen Laker at (646) 733-3020.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H252026
CLA-2 OT:RR: CTF:TCM:H252026 ERB
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MS. ALICE LIU
ATICO INTERNATIONAL USA, INC.
501 S. ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

MR. KIM YOUNG
BDP INTERNATIONAL INC.
2929 WALKER ROAD NW
2nd FLOOR
GRAND RAPIDS, MI 49544

RE: Revocation of NY N230084, and NY N236254; tariff classification of “gazebos” and canopy shelters

DEAR MS. LIU AND MR. YOUNG:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N230084, issued to Atico International USA, Inc. (Atico) on August 29, 2012, and NY N236254 issued to BDP International (BDP) on December 14, 2012, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of gazebos from China. We have reviewed these two rulings and found them to be incorrect. Accordingly, for the reasons set forth below, we are revoking these rulings.

FACTS:

CBP stated in NY N230084 the following:

The product to be imported is item number A050MA0075, gazebo. The product is comprised of steel tubes weighing 4.5 kgs, PE fabric at 1.2 kgs and the plastic part with a weight of 0.3kgs. The steel tubes outline the frame and a fire retardant PE cover forms the roof. The PE roof is placed over the steel frame. All components will be packed in one box and assembly is required.

The applicable subheading for the gazebo will be 7308.90.9590, Harmonized Tariff Schedule of the United States (HTSUS) which provides for structures...

PE stands for “polyethylene,” and in this context the product is a PE tarp, a waterproof laminate of woven strips and sheet material. Atico’s ruling request submission stated that the PE cover or shroud measures 10’ x 10’ along the top, and 10’ x 10’ along the floor, forming a square, is PE 100G, and is treated with fire retardant material which satisfies CPAI-84, a flammability standard written by the Industrial Fabrics Association International.¹ CBP stated in NY N236254 the following: It does not have fabric “walls.” The steel tube legs measure 24 mm, and the roof measures 18 mm.

¹ See <http://tentexperts.org/safety/safetyarticles/flammabilityrequirements>

CBP stated in NY N236254 the following:

The product to be imported is a canopy shelter identified as model number 25757. It consists of a one-piece cover, a 10' x 20' steel frame, bungee cords, footplates and spike anchors. The canopy fabric is woven of polyethylene strips that measure not over 5mm in width and is laminated on both sides with a plastic material which renders it waterproof. The applicable subheading for the gazebo will be 7308.90.95, Harmonized Tariff Schedule of the United States (HTSUS) which provides for structures...

BDP's ruling request submission stated that the canopy has been treated so as to be UV protectant, with added fade blockers and anti-aging and anti-fungal agents. It does not have fabric "walls." It is advertised as being quick and east to set up, and is "Great for: camping, decks/patios, special/corporate events, shade and protection."

ISSUE:

What is the tariff classification of the subject "gazebos" or outdoor canopies.

LAW AND ANALYSIS:

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

3926 Other articles of plastics and articles of other materials of headings 3901 to 3914:

**

7308 Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures of iron or steel:

The Court of International Trade (CIT) addressed the scope of "tents" of heading 6306, HTSUS, in *Target Stores v. United States*, Court No. 06-00444 (Slip Op. 12-41, March 22, 2012) when it considered certain products described as "gazebos." There the CIT noted that "tents" are typically light-weight, portable shelters, which form an enclosure around the user to protect users from weather elements other than mere sunshine. They are designed to set up and collapse quickly, are easily transported, and they are not landscape design features or akin to permanent shelters. Conversely, the products before the CIT in *Target Stores, supra*, were substantial in nature, could accommodate furniture, were assembled and disassembled in a manner that is time-consuming and requires the use of components, tools, and other techniques not associated with the easy setting up or taking down of tents.

Moreover, the subject merchandise in *Target Stores, supra*, are frequently used as a landscape design feature in a sight plan. They are often made of steel and wood, and not fabric or textiles. The CIT thus ruled that because the gazebos were not *prima facie* classified under heading 6306, HTSUS, as tents, they were classified under heading 7308, HTSUS, as structures of steel.

This decision is instructive here with respect to whether the instant merchandise falls under the scope of heading 6306, HTSUS. Although the instant merchandise is designed to facilitate easy assembly or set-up, we note that when in use, neither product protects the user from weather elements other than sunshine any more or less than the merchandise subject to *Target Stores, supra*. Accordingly, we find that the instant merchandise is not *prima facie* classifiable under heading 6306, HTSUS, as “tents.” That said, the subject gazebos are also not *prima facie* classifiable as a “structure of iron or steel.” The gazebos in N230084 are very lightweight, portable, “pop-up” canopies, which require little expert knowledge to assemble, and can likely be done by a single person with minimal (if any) external tools. They are advertised as great for picnics, temporary or seasonal events. They are not permanent shelters, they are not made of heavy metal, and there is no indication they are used as a landscape design feature. The gazebos of N236254 are heavier; online advertisements indicate they weigh around seventy (70) pounds and feature six legs and may require two persons to assemble. But they too require little expert knowledge, or outside tools, and the product’s packaging included with the original submission as well as the aforementioned online advertisements state that they are for seasonal shade, great for camping, commercial job sites, picnic areas, backyard events, pools or patio use. They are not permanent shelters, and there is no indication they are used as a landscape design feature. Neither product is akin to the exemplars listed in the EN to chapter 73, and nor are they characterized by the fact that “once they are put in position, they generally remain in that position.”²

The subject merchandise is a composite good, composed of a plastic textile cover and steel tube legs and frame. GRI 3 (b) provides:

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in set for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

² The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The EN to Chapter 73 states, in pertinent part: This heading covers complete or incomplete metal structures as well as parts of structures. For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats including so called universal plates, hoop, string, forgings or castings, by riveting, bolting, welding, etc.

The Courts have discussed the application of GRI 3(b) on several occasions. See *Conair Corp. v. United States*, 29 CIT 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337 – 1338 (Ct. Int'l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295 – 1356 (Ct. Int'l Trade 2006), *aff'd* 491 F.3d 1334 (Fed. Cir. 2007). In particular, in *Home Depot, Inc. v. United States*, *supra*, the court stated: “[a]n essential character inquiry requires a fact intensive analysis.” 427 F. Supp. 3d at 1284 (Ct. Int'l Trade 2006). The EN (VIII) to GRI 3(b) is also instructive. Therein it provides:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In *Home Depot, Inc. v. United States*, *supra*, the CIT examined all the factors listed in the EN (VIII) to GRI 3(b) to determine the classification of merchandise. The court also noted that the EN list is not exhaustive and that other factors should be considered, including the article's name, primary function, and the “attribute which strongly marks or serves to distinguish what it is. Its essential character is that which is indispensable to the structure, core or condition of the article, i.e. what it is.” *Id* quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378 (1971).

In this case, the composite good at issue is composed of a large plastic canopy of heading 3926, HTSUS, and a steel frame with steel legs of Chapter 73, HTSUS. Though the frames of each product are heavier than its respective canopy, given the overall weight of each product, this factor does not heavily weigh in favour of either component imparting the good's essential character. Neither importer provided CBP with pricing information, so this factor also does not weigh in favour of either component. But the primary role of the subject merchandise is to provide shade and minimal cover for users in fair weather. The consumer's expectation is to purchase a means of providing temporary outdoor shade. The metal frame cannot service this purpose alone; rather its role is to provide support for the canopy, under which users will sit or stand. Moreover, the canopies have been treated so as to be waterproof, fire retardant, anti-fungal, and UV-resistant, whereas the steel frames have no special treatments on them which benefit users. The essential character of the subject gazebos is thus, imparted by the canopy itself. It follows then that the subject merchandise is classified according to the constituent material of the canopy, as, “Other plastic articles” under heading 3926, HTSUS.

This is consistent with previous HQ rulings whereby CBP classified outdoor canopies according to the material of the cover itself. See NY856811, dated October 17, 1990, (classifying a dining canopy of polyethylene strips covered on both sides with a visible plastic coating under heading 3926, HTSUS as an other article of plastic); NY 802307, dated October 4, 1994 (classifying a dining canopy made of polyethylene under heading 3926, HTSUS as an other article of plastic); NY I88445, dated December 2, 2002 (classifying a sun shelter/dining canopy made from clear polyethylene strips under heading 3936, HTSUS, as an other article of plastic) and NY L81420,

dated December 17, 2004 (classifying a dining canopy composed of clear polyethylene fabrics under heading 3926, HTSUS as an other article of plastic).

HOLDING:

In accordance with GRI 3(b), the subject gazebos are classified in heading 3926, HTSUS. They are specifically provided for in subheading 3926.90.99, HTSUS, as an “Other article of plastic: Other: Other.” The duty rate is 5.3 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N230084, dated August 29, 2012, and NY N236254, dated December 14, 2012 are REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF PHOSPHOR PLATE BARRIER ENVELOPES

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the classification of phosphor plate barrier envelopes.

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 modifying a ruling concerning the classification of phosphor plate barrier envelopes, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed revocation was published on September 3, 2014, in Volume 48, Number 35, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 27, 2015.

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), a notice was published in the CUSTOMS BULLETIN, Volume 48, No. 35, on September 3, 2014, proposing to revoke New York Ruling Letter (NY) N050327, dated February 20, 2009, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this issue that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised CBP during the notice period.

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

In NY N050327, CBP classified the merchandise in subheading 3926.90.99, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics, other. The referenced ruling is incorrect because the merchandise is not different with regard to the function of the cover *vis-à-vis* the x-ray apparatus from the covers for a CCD/CMOS sensors classified in the same

ruling. Both types of covers keep the image from being distorted and provide comfort in the patient's mouth so that it may be more easily positioned.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N050327, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter H061207 (Attached). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: February 4, 2015

IEVA K. O'ROURKE

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H061207

January 28, 2015
OT:RR:CTF:TCM H061207 ARM
CATEGORY: Classification
TARIFF NO.: 9022.90.60

MR. JAY PARK
EXCEL INTERNATIONAL OF N.Y. CORP.
146-27 167TH ST., SUITE 201
JAMAICA, NY 11434

RE: Reconsideration of NY N050327; Safe 'n' Sure and Deluxe Safe 'n' Sure Phosphor Plate Barrier Envelopes

DEAR MR. PARK:

This is in response to your letter and submitted sample, dated March 12, 2009, requesting reconsideration of New York Ruling Letter ("NY") N050327, dated February 20, 2009, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of phosphor plate barrier envelopes. We have reviewed that ruling and find it to be incorrect. This ruling modifies NY N050327.

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), a notice was published in the CUSTOMS BULLETIN, Volume 48, No. 35, on September 3, 2014, proposing to revoke New York Ruling Letter (NY) N050327, dated February 20, 2009, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

The merchandise at issue is the "Safe 'n' Sure" and "Deluxe Safe 'n' Sure" Phosphor Plate Barrier Envelopes. In NY N050327, we stated:

The next two samples are the Safe'n'Sure and Deluxe Safe'n'Sure Phosphor Plate Barrier Envelopes. A phosphor plate is placed in a barrier envelope and then placed on a film holding device. The phosphor plates are exposed to x-rays inside the patient's mouth, removed, and then read by a specialized apparatus. These envelopes are not accessories to X-ray apparatus, but rather are accessories to photographic plates and films, which are excluded from heading 9022 by Harmonized System Explanatory Note Exclusion (b) to 9022.

In your March 12, 2009 letter, you confirm that these photostimulable sensors require the image to be placed in a scanner which transfers the image to a computer. The product information submitted states "Safe 'n' Sure is available for . . . plates and work with any plate on the market (Kodak, Dentoptix, etc)."

ISSUE:

Whether the Phosphor Plate Barrier Envelopes are accessories to x-ray apparatus of heading 9022, or, if not, are classified as plastic articles of heading 3926.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

The HTSUS provisions under consideration are the following:

3926 Other articles of plastics and articles of other materials of headings 3901 to 3914 (con.):

3926.90: Other:

3926.90.99 Other

* * * * *

9022 Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like; parts and accessories thereof:

Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus:

9022.90 Other, including parts and accessories:
Other:

9022.90.60 Of apparatus based on the use of X-rays

Note 2(u) to Chapter 39 states, in pertinent part, the following:

2. This chapter does not cover:

(u) Articles of chapter 90 (for example, optical elements, spectacle frames, drawing instruments);

Note 2 to Chapter 90, HTSUS, provides as follows:

Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8485, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a

number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013, or 9031) are to be classified with the machines, instruments or apparatus of that kind;

(c) All other parts and accessories are to be classified in heading 9033.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

EN 39.26 states, in pertinent part, the following:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

They include:

(4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

EN 9022 states, in pertinent part, the following:

PARTS AND ACCESSORIES

Subject to the provisions of Notes 1 and 2 to this Chapter (see the General Explanatory Note), parts and accessories identifiable as being solely or principally for use with X-ray apparatus, etc., are also classified in this heading. . . .

The heading also **excludes** :

(b) Photographic plates and film (**Chapter 37**).

* * * * *

The instant merchandise consists of phosphor plate barrier envelopes made of plastic. These envelopes cover the phosphor plate, a photographic plate classifiable in Chapter 37. Photographic plates and film of Chapter 37 are excluded from classification in heading 9022. The marketing literature states "Our regular Safe N Sure PSP envelopes protect your plates while making it quick and easy to load and unload. And your patients will enjoy the added comfort from our rounded corners and soft edges."

In N050327 we reasoned that the sleeves at issue here are designed as accessories to the photographic plates, and not accessories to an article of heading 9022, HTSUS. Since there are no provisions for accessories of Chapter 37, we reasoned that the instant merchandise is classified according to its material make-up.

However, in HQ 955650, dated March 14, 1994, we held that bite wing tabs for similar photographic plates were accessories to the X-ray apparatus as they increase the quality of the X-ray itself and thus improved the operation of the instruments with which they were used. Furthermore, other articles placed in or on the patient's body rather than connected to the x-ray machine itself have been classified as accessories to the x-ray apparatus e.g. absorption filters placed on the patient, HQ 956791, dated July 28, 1994.

The instant merchandise is similar to the bite wings in that by protecting the plate, the x-ray image itself is more likely readable. Furthermore, by rounding the edges for comfort in the patient's mouth, the plate is more easily positioned. Lastly, the covers are used solely with the photographic plates, which are used solely with the x-ray machines to produce an image. While photographic plates themselves are excluded from classification in the heading (EN 90.22), articles attached to the plates that are used in a way to enhance the function of the x-ray itself, are accessories to the machine. We also note that covers for a CCD/CMOS sensors that transmit the image directly to a computer were classified as accessories to the x-ray apparatus. Although a different technology, we find no difference here with regard to the function of the cover *vis-à-vis* the x-ray apparatus. Both types of covers keep the image from being distorted and provide comfort in the patient's mouth so that it may be more easily positioned. Hence, the instant merchandise is an accessory to the X-ray apparatus and therefore meets the terms of heading 9022.

Although heading 3926 indisputably describes the good as an article of plastic, it is excluded from classification in Chapter 39 by virtue of Note 2(u) to Chapter 39. Using GRI 6, the instant articles are classified as accessories to x-ray apparatus, in subheading 9022.90.60, HTSUS.

HOLDING:

The Phosphor Plate Barrier Envelopes are classified in heading 9022, HTSUS. Specifically, they are classified in subheading 9022.90.60, HTSUS, the provision for Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like; parts and accessories thereof: "Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus: Other, including parts and accessories: Other: Of apparatus based on the use of X-rays". The general column 1 rate of duty is .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 the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N050327 dated February 20, 2009, is modified.

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

Sincerely,

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

ACCREDITATION AND APPROVAL OF COASTAL GULF AND INTERNATIONAL, 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 Coastal Gulf and International, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Coastal Gulf and International, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 19, 2014.

DATES: The accreditation and approval of Coastal Gulf and International, Inc., as a commercial gauger and laboratory became effective on August 19, 2014. The next triennial inspection date will be scheduled for August 2017.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Coastal Gulf and International, Inc., 13615 River Rd., Luling, LA 70070, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Coastal Gulf and International, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
11.....	Physical Property.
12	Calculations.
17	Maritime measurement.
18	Crude Oil Gathered From Small Tanks by Truck.

Coastal Gulf and International, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-03.....	ASTM D-4006....	Standard test method for water in crude oil by distillation.
27-48.....	ASTM D-4052....	Standard test method for density and relative density of liquids by digital density meter.
27-13.....	ASTM D-4294....	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-04.....	ASTM D-95.....	Standard test method for water in petroleum products and bituminous materials by distillation.
27-05.....	ASTM D-4928....	Standard test method for Water in crude oils by Coulometric Karl Fischer Titration.
27-08.....	ASTM D-86.....	Standard test method for distillation of petroleum products at atmospheric pressure.
27-11.....	ASTM D-445.....	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27-58.....	ASTM D-5191....	Standard test method for Vapor pressure of petroleum products (Mini Method).
27-06.....	ASTM D-473.....	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27-50.....	ASTM D-93.....	Standard test methods for flash point by Penske-Martens Closed Cup Tester.
27-46.....	ASTM D-5002....	Standard test method for density and relative density of crude oils by digital density analyzer (API gravity).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: February 4, 2015.

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

[Published in the Federal Register, February 11, 2015 (80 FR 7626)]

**ANNOUNCEMENT OF MODIFICATION OF ACE CARGO
RELEASE TEST TO PERMIT THE COMBINED FILING OF
CARGO RELEASE AND IMPORTER SECURITY FILING
(ISF) DATA**

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning Cargo Release in the Automated Commercial Environment (ACE) by modifying the name of one data element and allowing certain authorized importers and licensed customs brokers to submit the ACE Cargo Release entry and the Importer Security Filing (ISF) in a combined transmission to CBP.

DATES: The ACE Cargo Release Test modifications set forth in this document are effective on February 10, 2015. The ACE Cargo Release Test will run until approximately November 1, 2015.

ADDRESSES: Comments or questions concerning this notice and indication of interest in participation in ACE Cargo Release Test should be submitted, via email, to Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov. In the subject line of your email, please use, "Comment on Combined ACE Cargo Release and ISF Filing." The body of the email should identify the ports where filings are likely to occur.

FOR FURTHER INFORMATION CONTACT: For policy questions related to ACE, contact Stephen Hilsen, Director, Business Transformation, ACE Business Office, Office of International Trade, at stephen.r.hilsen@cbp.dhs.gov. For policy questions related to ISF, contact Craig Clark, Program Manager, Cargo and Conveyance Security, Office of Field Operations, at craig.clark@cbp.dhs.gov. For technical questions, contact Steven Zaccaro, Client Representative Branch, ACE Business Office, Office of International Trade, at steven.j.zaccaro@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. *The National Customs Automation Program*

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions. CBP’s modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions. Each release will begin with a test and, if the test is successful, will end with implementation of the functionality through the promulgation of regulations governing the new ACE feature and the retirement of the legacy ACS function.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in *Section VII*, entitled, “*Development of ACE Prototypes.*” The procedures and criteria applicable to participation in the ACE Cargo Release test and prior ACE tests remain in effect unless otherwise explicitly changed by this notice.

B. *ACE Cargo Release Test*

On November 9, 2011, CBP published in the **Federal Register** (76 FR 69755) a notice announcing an NCAP test concerning ACE Simplified Entry to simplify the entry process by reducing the number of data elements required to obtain release for cargo imported by air. In a general notice titled “Modification of National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Cargo Release” published in the **Federal Register** (78 FR 66039) on November 4, 2013, CBP modified the ACE Simplified Entry Test and renamed it the ACE Cargo Release Test. The ACE Cargo

Release Test provided more capabilities to test participants and expanded eligibility by eliminating the Customs-Trade Partnership Against Terrorism (C-TPAT) status requirement for importer self-filers and customs brokers. On February 3, 2014, CBP published a notice in the **Federal Register** (79 FR 6210) announcing modification of the ACE Cargo Release Test to include the ocean and rail modes of transportation.

C. Importer Security Filing

On November 25, 2008, pursuant to section 343(a) of the Trade Act of 2002 and section 203 of the Security and Accountability for Every (SAFE) Port Act of 2006, CBP published an interim final rule titled Importer Security Filing and Additional Carrier Requirements in the **Federal Register** (73 FR 71730). That interim final rule required importers and carriers to submit certain information pertaining to maritime cargo prior to loading on vessels at foreign seaports by means of a CBP-approved electronic data interchange (EDI) system. On March 29, 2012, CBP published a notice in the **Federal Register** (77 FR 19030) announcing that, as of September 29, 2012, ACE is the only CBP-approved EDI for carriers to transmit required advance ocean cargo information, including ISF data.

The interim final rule, which is commonly known as the “Importer Security Filing” (ISF) or “10 + 2” rule, generally requires the ISF Importer to transmit certain cargo information consisting of 10 data elements for security purposes to CBP at least 24 hours before goods are loaded onto an ocean vessel destined for the United States. The ISF Importer is also required to transmit information regarding the container stuffing location and consolidator (stuffer) to CBP no later than 24 hours prior to arrival in a U.S. port or upon lading at a foreign port that is less than a 24 hour voyage to the closest U.S. port. *See* 19 CFR 149.2 and 149.3. Section 149.6 allows ISF data to be filed via the same electronic transmission as entry or entry/entry summary documentation pursuant to 19 CFR 142.3. CBP currently accepts this combined transmission through ACS. Now, as explained in Section III.B. below, ACE, under the ACE Cargo Release Test, has this functionality. Accordingly, in this notice, CBP announces it will be testing the filing of the combined transmission under ACE for filers participating in the ACE Cargo Release test. Until this functionality is generally available, anyone wishing to file a combined transmission who is not a participant in the ACE Cargo Release test should continue to use ACS to make that transmission. Although the interim final rule also requires the incoming carrier to provide additional information in advance as provided in 19 CFR 4.7a, these additional information requirements for carriers are not relevant to the ACE Cargo Release Test.

The ISF Importer is defined in 19 CFR 149.1 as the party causing goods to arrive within the limits of a U.S. port by vessel. Section 149.1 further provides that except for certain types of shipments not relevant to the ACE Cargo Release Test, the ISF Importer will be the goods' owner, purchaser, consignee, or agent such as a licensed customs broker.

II. Authorization for Modification of the ACE Cargo Release Test

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The ACE Cargo Release Test, as modified in this notice, is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

III. Modifications of ACE Cargo Release Test

A. Modification of One of the ACE Cargo Release Data Elements

CBP is modifying one of the data elements required under the ACE Cargo Release Test. CBP is renaming the data element “Buyer Employer Identification Number (consignee number)” to “Consignee Number.” *See* data element 3 highlighted below. The definition of “Consignee Number” is specified in 19 CFR 149.3. This is the same definition that applied previously.

The ACE Cargo Release data elements, as modified by this general notice, are:

- (1) Importer of Record Number.
- (2) Buyer name and address.
- (3) Consignee Number.
- (4) Seller name and address.
- (5) Manufacturer/supplier name and address.
- (6) HTS 10-digit number.
- (7) Country of origin.
- (8) Bill of lading.
- (9) Bill of lading issuer code.
- (10) Entry number.
- (11) Entry type.
- (12) Estimated shipment value.

(13) Bill Quantity (The quantity of shipping units shown in the bill of lading. If the bill of lading quantity is specified in the entry, it

becomes the entered and released quantity for that bill. If the bill quantity is not specified, full bill quantity will be entered and released for that bill).

Data element (1) and data elements (6) through (12) are defined in the same manner as when they are used for entry filing. Data elements (2) through (5) are defined in accordance with the provisions of 19 CFR 149.3.

B. Modification of ACE Cargo Release Test To Permit the Combined Submission of ACE Cargo Release and ISF Data

CBP is also modifying the ACE Cargo Release Test to permit the transmission of ACE Cargo Release and ISF data in a combined submission when certain requirements are met. In order to participate in the ACE Cargo Release Test and submit ACE entry and ISF data in a combined submission, filers must meet certain eligibility, data, timeliness, and other requirements.

1. *Eligibility for combined filing:* In order to file a combined submission the filer must meet the definition of an ISF Importer as defined in § 149.1 and be either a: (1) Self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release; or (2) self-filing importer or broker who has stated his or her intent to file entry summaries in ACE in its request to participate in the test. Parties seeking to participate in this test must use a software package that has completed ABI certification testing for ACE and offers the ACE Cargo Release message set prior to transmitting data under the test. See the General Notice of August 26, 2008 (73 FR 50337) for a complete discussion on the procedures for obtaining an ACE Portal Account. Importers not self-filing must ensure their broker has the capability to file entry summaries in ACE. Although the ACE Cargo Release Test is open to all importers and customs brokers filing ACE Entry Summaries for cargo transported in the air, ocean and rail modes, the ISF is required only for cargo transported by vessel in the ocean mode of transportation. Therefore, the combined submission is available only for cargo transported by vessel. Entries requiring Partner Government Agency (PGA) information and certification from entry summary are not available for a combined filing at this time.

2. *Procedures for combined filing:* Any party seeking to file a combined submission that is not already a participant in the ACE Cargo Release Test must request to participate in the test and provide their filer code to CBP and identify the port(s) at which they are interested

in filing their combined ACE Cargo Release and ISF data. For a description of the application process and selection criteria for the ACE Cargo Release Test *see* the instruction published in the general notice titled “Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers,” 79 FR 6210 (February 3, 2014). A party that is currently participating in the ACE Cargo Release Test may file a combined submission after notifying their ACE account representative.

3. *Additional data elements required for combined filing:* To submit a combined filing, importers and customs brokers need to transmit the following data elements: (1) The ACE Cargo Release data elements, as described and modified in Section III. A and (2) the three data elements listed below, as defined in 19 CFR 149.3. The three additional data elements are:

- (1) Ship to party.
- (2) Container stuffing location.
- (3) Consolidator (stuffer).

4. *Timeframe for the combined filing:* Because the applicable timeframes for submitting ISF data as set forth in 19 CFR part 149 are earlier than the required timeframe for submitting ACE Cargo Release data, test participants must transmit all of the required information within the applicable timeframes specified in 19 CFR part 149. With certain exceptions, the ISF Importer must transmit the ISF data no later than 24 hours before the cargo is laden aboard the vessel at the foreign port. *See* 19 CFR 149.2 and 149.3.

5. *Other requirements:* The submission of a combined filing does not relieve the ISF Importer of any of its other obligations under 19 CFR part 149. With regard to the submission of ISF data, test participants should be aware that they will not be able to utilize the ISF flexible filing provisions in 19 CFR 149.2(f) (which permits the ISF Importer to submit an initial response for four of the data elements based on the best available data available and to update the information as soon as more precise or more accurate information is available) if they submit a combined filing. This limitation is necessary because the Cargo Release information will be used by CBP to make determinations regarding the admissibility of imported merchandise.

Upon receipt of the ACE Cargo Release data and the three additional ISF data elements, CBP will process the submission and separately transmit the ISF filing response and cargo release decision to the filer. As provided in 19 CFR 141.68(e), the merchandise will not be considered to be entered until the merchandise has arrived in the port with the intent to unlade.

6. *Test duration*: The ACE Cargo Release Test, as modified, will run until approximately November 1, 2015.

IV. Misconduct Under the Test

The terms for misconduct under the ACE Cargo Release Test set forth in 78 FR 66039 (November 4, 2013) continue to apply.

V. Previous Notices

All requirements and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

VI. Paperwork Reduction Act

The collection of information for the ACE Cargo Release Test and ISF have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). The OMB information collection number for the ACE Cargo Release Test is 1651–0024 and the OMB information collection number for ISF is 1651–0001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

VII. Development of ACE Prototypes

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

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 70 FR 5199 (February 1, 2005); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).

- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection

Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release To Allow Importers and Brokers To Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment Document Image System: 79 FR 36083 (June 25, 2014).

Dated: February 5, 2015.

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, February 10, 2015 (80 FR 7487)]

**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS**

(No. 1 2015)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in January 2015. The last notice was published in the CUSTOMS BULLETIN December 24, 2014.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229-1177.

FOR FURTHER INFORMATION CONTACT: LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade at (202) 325-0095.

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

CBP IPR RECORDATION — JANUARY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 02-00068	1/8/2015	1/8/2025	LA TOUR EIFFEL PARIS	LA TOUR EIFFEL-PARIS	No
TMK 05-00048	1/8/2015	1/8/2025	MOVADO	MOVADO LLC	No
TMK 04-00865	1/21/2015	3/25/2025	STUMPJUMPER	Specialized Bicycle Components, Inc.	No
TMK 89-00609	1/21/2015	3/29/2018	FIREBIRD	GENERAL MOTORS LLC	No
TMK 04-01137	1/7/2015	11/20/2024	LEE (Stylized)	THE H. D. LEE COMPANY, INC.	No
TMK 05-00179	1/8/2015	1/8/2025	Nike Air and Swoosh design	NIKE, INC.	No
TMK 98-00891	1/21/2015	6/11/2017	DEX-COOL	GENERAL MOTORS LLC	No
TMK 05-00273	1/8/2015	1/8/2025	Redskins Helmet Design	Pro Football, Inc.	No
TMK 06-00744	1/21/2015	1/21/2025	NEW ERA	New Era Cap Co., Inc.	No
TMK 06-00725	1/21/2015	1/21/2025	NE	NEW ERA CAP CO., INC.	No
TMK 06-01007	1/8/2015	1/8/2025	JANSFORT (Stylized)	JANSFORT APPAREL CORP.	No
TMK 06-01438	1/21/2015	1/21/2025	JUICY COUTURE	JUICY COUTURE, INC.	No
TMK 07-00279	1/8/2015	1/8/2025	HEELYS	Heeling Sports Limited Heeling Management Corp.	No
TMK 07-01199	1/8/2015	1/8/2025	VENEERWARE	bambu, LLC	No
TMK 09-00190	1/5/2015	12/4/2017	HIP HOP ABS	BEACHBODY, LLC	No
TMK 11-00245	1/8/2015	1/8/2025	URBAN ZEN	KARAN, DONNA	No
TMK 11-00286	1/8/2015	1/8/2025	URBAN ZEN	Karan, Donna	No
TMK 11-00365	1/21/2015	1/21/2025	GMC	GENERAL MOTORS LLC	No
TMK 11-00459	1/21/2015	9/12/2021	GMC	GENERAL MOTORS LLC	No

CBP IPR RECORDATION — JANUARY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11-00404	1/21/2015	1/26/2023	HUMMER	GENERAL MOTORS LLC	No
TMK 11-00371	1/8/2015	1/8/2025	REFUGE.	Charlotte Russe Merchandising, Inc.	No
TMK 11-00857	1/5/2015	8/9/2020	JUICY COUTURE	JUICY COUTURE, INC.	No
TMK 14-00097	1/8/2015	1/8/2025	ALDO (Stylized)	The Aldo Group Inc/Le Groupe Aldo Inc.	No
TMK 13-00247	1/8/2015	1/8/2025	SOLEIL	Socit BIC JOINT STOCK COMPANY	No
TMK 13-01016	1/8/2015	1/8/2025	NOVARA	Recreational Equipment, Inc.	No
TMK 13-01158	1/8/2015	1/8/2025	ABERLOUR	CHIVAS HOLDINGS (IP) LIMITED	No
TMK 13-01215	1/8/2015	1/8/2025	CEROBEAR	Cerobear GmbH	No
TMK 14-00049	1/8/2015	1/8/2025	XTRPRO	MD AUDIO ENGINEERING, INC.	No
TMK 14-00006	1/8/2015	1/8/2025	HCCA	MD AUDIO ENGINEERING, INC.	No
TMK 14-00085	1/8/2015	1/8/2025	COBALT	MD AUDIO ENGINEERING, INC.	No
TMK 15-00075	1/21/2015	7/24/2017	TURBO SLIM	BEACBODY, LLC	No
TMK 15-00006	1/5/2015	3/4/2023	MAGIC CARPET YOGA MATS	LENINGER, SOPHIE MARIANNE	No
TMK 15-00002	1/5/2015	7/15/2023	DAVID AUSTIN	David Austin Roses Limited	No
TMK 15-00003	1/5/2015	3/16/2025	FUCHSIA COLOR APPLIED TO POWER JACK	Zendex Tool Corp.	No
COP 15-00001	1/5/2015	12/10/2034	LIGHT ANGEL Packaging.	Telebrands Corp	No
TMK 15-00004	1/5/2015	7/26/2021	NANO & Design	Heeling Sports Limited Heeling Management Corp., a Texas corporation	No
TMK 15-00005	1/5/2015	6/29/2021	Word Mark: G GRIFFIN	Griffin Technology, Inc.	No

CBP IPR RECORDATION — JANUARY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 15-00007	1/5/2015	12/24/2023	Word Mark: SURVIVOR	Griffin Technology, Inc.	No
TMK 15-00008	1/5/2015	1/16/2018	WHISKER BISCUIT	SOP Services, Inc.	No
TMK 15-00009	1/5/2015	9/28/2021	MEAT SEEKER	Bear Archery, Inc.	No
COP 15-00002	1/5/2015	3/26/2032	Apple icon -Maps.	Apple Inc.	No
COP 15-00003	1/5/2015	7/13/2033	Apple icon -Maps iOS 7.	Apple Inc.	No
COP 15-00004	1/5/2015	7/13/2033	Apple icon -Photos iOS 7.	Apple Inc.	No
COP 15-00005	1/5/2015	8/26/2031	Apple icon -Safari.	Apple Inc.	No
COP 15-00006	1/5/2015	8/20/2033	Apple icon -Safari iOS 7.	Apple Inc.	No
COP 15-00007	1/5/2015	8/12/2031	Apple icon -Settings.	Apple Inc.	No
COP 15-00008	1/5/2015	7/13/2033	Apple icon -Settings iOS 7.	Apple Inc.	No
COP 15-00009	1/5/2015	9/19/2033	Apple iPhone 4 label (included in box)	Apple Inc.	No
COP 15-00010	1/5/2015	8/18/2031	Apple iPhone 4 packaging -2010.	Apple Inc.	No
COP 15-00011	1/5/2015	9/25/2033	Apple iPhone 4S packaging-2011.	Apple Inc.	No
COP 15-00012	1/5/2015	9/24/2033	Apple iPhone 5 label (included in the box)	Apple Inc.	No
COP 15-00013	1/5/2015	9/29/2033	Apple iPhone 5 packaging -2012.	Apple Inc.	No
COP 15-00014	1/5/2015	6/10/2033	Lightning packaging.	Apple Inc.	No
TMK 15-00010	1/5/2015	3/30/2024	LUBE-A-BOOM	LAB, L.L.C.	No
TMK 15-00011	1/5/2015	10/1/2024	VAPEHEAD ORIGINS	Aguna, Shahani	No
TMK 15-00012	1/5/2015	4/8/2018	WELL-TECH and Design	WELL-TECH ELECTRIC CO., LTD.	No
TMK 15-00013	1/5/2015	11/3/2019	design only	EVER-TOP HARDWARE	No

CBP IPR RECORDATION — JANUARY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00014	1/6/2015	1/26/2025	Ka Vo	KALTENBACH & VOIGT GMBH	No
COP 15-00017	1/6/2015	12/6/2034	Blue Wings, et al.	Roza Khamitova	No
COP 15-00016	1/6/2015	12/5/2034	GRAB BAG Packaging.	Telebrands Corp. Address	No
COP 15-00015	1/6/2015	12/5/2034	PEDGG POWER Packaging.	Telebrands Corp	No
TMK 15-00015	1/7/2015	2/24/2020	WELL-TECH and Design	Well-Tech Electric Co., Ltd.	No
TMK 15-00016	1/7/2015	2/13/2018	BENRO	Mamiya America	No
TMK 15-00017	1/7/2015	3/16/2024	P90	Beachbody, LLC	No
TMK 15-00018	1/7/2015	3/16/2025	EVERGROW	UTR Tech Inc DBA UTR Trading USA Inc.	No
TMK 15-00019	1/7/2015	8/8/2022	REVO & Design	SBG REVO HOLDINGS, LLC	No
TMK 15-00020	1/7/2015	12/25/2017	FUEGO	BODEGAS ORDONEZ, S.L. SOCIEDAD DE RESPONSABILIDAD LIMITADA	No
TMK 15-00021	1/7/2015	12/25/2017	GARNACHA DE FUEGO	BODEGAS ORDONEZ, S.L. SOCIEDAD DE RESPONSABILIDAD LIMITADA	No
TMK 15-00022	1/7/2015	1/10/2017	KAVO	Kaltenbach & Voigt GmbH	No
TMK 15-00023	1/7/2015	8/10/2021	AFG	Magpul Industries Corp	No
TMK 15-00024	1/7/2015	8/22/2022	AFG-2	Magpul Industries Corp.	No
TMK 15-00025	1/8/2015	1/19/2021	CTR	Magpul Industries Corp	No
TMK 15-00026	1/8/2015	7/21/2019	MOE	Magpul Industries Corp.	No
TMK 15-00027	1/8/2015	1/7/2025	MS1	Magpul Industries Corp.	No
TMK 15-00028	1/8/2015	7/8/2024	MS4	Magpul Industnes Corp.	No

CBP IPR RECORDATION — JANUARY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00029	1/8/2015	1/16/2023	BEACHBODY ULTIMATE	BEACHBODY, LLC	No
TMK 15-00030	1/8/2015	1/5/2021	TEAM BEACHBODY	BEACHBODY, LLC	No
TMK 15-00031	1/8/2015	12/23/2024	3 DAY REFRESH	Beachbody, LLC	No
TMK 15-00032	1/8/2015	3/11/2023	AMERICA'S MASTER GUNMAKER	Smith & Wesson Corp.	No
TMK 15-00033	1/8/2015	11/9/2024	BODYGUARD	SMITH & WESSON CORP.	No
TMK 15-00034	1/8/2015	1/25/2022	2-DAY FAST FORMULA	BEACHBODY, LLC	No
TMK 15-00035	1/8/2015	5/24/2016	CHIEFS SPECIAL	SMITH & WESSON CORP.	No
TMK 15-00036	1/8/2015	10/12/2021	GOVERNOR	Smith & Wesson Corp	No
TMK 15-00037	1/8/2015	4/23/2020	LADY SMITH	SMITH & WESSON CORP.	No
TMK 15-00038	1/8/2015	6/4/2018	MILITARY POLICE	Smith & Wesson Corp.	No
TMK 15-00039	1/8/2015	11/6/2023	PERFORMANCE CENTER	Smith & Wesson Corp.	No
TMK 15-00040	1/8/2015	1/14/2024	S & W	SMITH & WESSON CORP.	No
TMK 15-00041	1/8/2015	8/24/2021	SMITH & WESSON	Smith & Wesson Corp.	No
TMK 15-00042	1/8/2015	6/18/2024	L@ LIGHTAHEAD	Lightahead Inc	No
TMK 15-00043	1/8/2015	1/30/2023	SMITH & WESSON	Smith & Wesson Corp	No
TMK 15-00044	1/8/2015	5/20/2017	T/C	SMITH & WESSON CORP.	No
TMK 15-00045	1/8/2015	3/11/2023	TC Design Logo	Smith & Wesson Corp.	No
TMK 15-00050	1/12/2015	12/16/2024	M&P; (Stylized)	Smith & Wesson Corp.	No
TMK 15-00051	1/12/2015	12/16/2024	M&P; (Stylized)	Smith & Wesson Corp.	No
TMK 15-00047	1/8/2015	7/26/2015	ELVIS	ABG EPE IP LLC	No

CBP IPR RECORDATION — JANUARY 2015

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TMK 15-00054	1/12/2015	12/16/2024	M&P	Smith & Wesson Corp.	No
TMK 15-00052	1/12/2015	12/16/2024	M&P (Stylized)	Smith & Wesson Corp.	No
TMK 15-00053	1/12/2015	12/16/2024	M&P; (Stylized)	Smith & Wesson Corp.	No
TMK 15-00046	1/8/2015	8/6/2023	MAGNUM	SMITH & WESSON CORP.	No
TMK 15-00055	1/12/2015	2/9/2021	PROTECTED BY SMITH & WESSON	Smith & Wesson Corp.	No
TMK 15-00056	1/12/2015	12/16/2024	SMITH & WESSON	Smith & Wesson Corp.	No
TMK 15-00049	1/8/2015	12/30/2024	TC Design Logo	Smith & Wesson Corp.	No
TMK 15-00057	1/12/2015	12/30/2024	THOMPSON/CENTER	Smith & Wesson Corp.	No
TMK 15-00048	1/8/2015	2/25/2018	ELVIS	ABG EPE IP LLC	No
TMK 15-00076	1/21/2015	6/5/2022	Z	BOSCH CORPORATION	No
TMK 15-00077	1/21/2015	11/20/2023	Define Bottle & Design	Weisman, Carla	No
TMK 15-00078	1/21/2015	12/9/2024	AIDIA	NEW HILLCREST GROUP INC.	No
TMK 15-00079	1/21/2015	3/5/2017	D2 Racing Sports	Hinderliter, Michael	No
TMK 15-00080	1/21/2015	3/16/2025	Yellow Border Trade Dress (Rectangle)	Fluke Corporation	No
TMK 15-00081	1/21/2015	3/16/2025	Yellow Border Trade Dress (Tapered)	Fluke Corporation	No
TMK 15-00074	1/21/2015	2/4/2025	"BONES 2-Bike" Product Configuration	Saris Cycling Group, Inc.	No
TMK 15-00073	1/21/2015	2/4/2025	"BONES 3-Bike" Product Configuration	Saris Cycling Group, Inc.	No
TMK 15-00072	1/21/2015	4/29/2023	BRIGHTBOX	Brightbox, Inc.	No
TMK 15-00082	1/21/2015	9/2/2020	MICHELIN	MICHELIN NORTH AMERICA, INC.	No
TMK 15-00083	1/21/2015	4/4/2021	3W7Z-12029-AA	Ford Motor Company	No

CBP IPR RECORDATION — JANUARY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00084	1/21/2015	9/8/2021	MOTORCRAFT	FORD MOTOR COMPANY	No
TMK 15-00085	1/22/2015	11/4/2019	LEZYNE	Michael A. Kozuschek	No
TMK 15-00086	1/22/2015	4/13/2019	LEZYNE	Michael A. Kozuschek	No
TMK 15-00058	1/13/2015	4/20/2019	LEZYNE	Michael A. Kozuschek	No
COP 15-00019	1/22/2015	1/20/2035	P90X3.	Beachbody, LLC.	No
COP 15-00020	1/22/2015	1/20/2035	BRAZIL BUTT LIFT MASTER SERIES.	Beachbody, LLC. Address	No
TMK 15-00059	1/13/2015	1/24/2025	TRISTAND (Stylized)	EMERSON ELECTRIC CO.	No
TMK 15-00060	1/13/2015	9/3/2024	SAXENDA	Novo Nordisk A/S	No
TMK 15-00061	1/16/2015	9/23/2019	FOMOCO	Ford Motor Company	No
TMK 15-00062	1/16/2015	10/22/2024	HOT SHAPERS	IDEAL DRTV LLC	No
TMK 15-00102	1/30/2015	3/23/2025	VHO & DESIGN	Aguna, Lionel; Aguna, Shahani; Lagajino, Edralin; Todd, Greg; Todd, Rowena	No
TMK 15-00063	1/16/2015	4/6/2025	VALOR ABOVE ALL VALOR ARMORMENT SALES, LLC and Design	Valor Armorment Sales, LLC	No
TMK 15-00066	1/16/2015	4/19/2020	Corvette C6 Emblem	GENERAL MOTORS COMPANY	No
TMK 15-00065	1/16/2015	4/11/2023	GENERAL MOTORS	GENERAL MOTORS LLC	No
TMK 15-00064	1/16/2015	7/3/2017	AEROPRESS	Adler, Alan J.	No
TMK 15-00067	1/16/2015	2/27/2020	DESIGN (Lamborghini "charging bull")	AUTOMOBILI LAMBORGHINI S.P.A.	No
TMK 15-00068	1/16/2015	11/13/2023	DESIGN ONLY	Streamlight, Inc.	No

CBP IPR RECORDATION — JANUARY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 15-00021	1/23/2015	5/24/2031	ONE ON ONE TONY HORTON KIT, VOLUME 2	Beachbody, LLC.	No
TMK 15-00070	1/16/2015	2/13/2021	LAMBORGHINI	AUTOMOBILI LAMBORGHINI S.P.A.	No
COP 15-00018	1/16/2015	2/9/2034	21 DAY FIX	Beachbody, LLC. Address	No
TMK 15-00069	1/16/2015	7/2/2023	NOTA BENE CELLARS LTD	Nota Bena Cellars, LLC	No
TMK 15-00071	1/16/2015	9/4/2021	SEALPROOF	Superflex Ltd.	No
TMK 15-00087	1/22/2015	12/13/2021	CELLULESS MD	Natural Products International, LLC	No
TMK 15-00088	1/23/2015	2/19/2024	NEOTEX	IDEAL DRTV, LLC	No
COP 15-00024	1/26/2015	3/12/2033	Office Professional 2013	Microsoft Corporation	No
COP 15-00022	1/26/2015	12/22/2034	Graphic Design	Wenger S.A.	No
TMK 15-00089	1/23/2015	12/3/2023	JUSTIN and Design	Boot Royalty Company, L.P.	No
COP 15-00023	1/26/2015	7/20/2034	3-DAY REFRESH	Beachbody, LLC	No
COP 15-00025	1/30/2015	1/30/2035	POKEMON ALPHA SAPPHIRE.	GAME FREAK INC., Transfer	No
TMK 15-00090	1/26/2015	9/17/2023	Oldsmobile Emblem	GENERAL MOTORS LLC	No
TMK 15-00091	1/26/2015	4/3/2022	On and Star Design (Onstar Button Logo)	Onstar LLC	No
TMK 15-00092	1/26/2015	12/18/2017	NO!NO!	Radiancy, Inc.	No
TMK 15-00093	1/26/2015	7/6/2023	GEVALIA	KRAFT FOODS GROUP BRANDS LLC	No
TMK 15-00094	1/26/2015	6/30/2024	HYNIX and Design	SK HYNIX INC.	No
TMK 15-00096	1/27/2015	1/22/2024	SK HYNIX	SK HOLDINGS CO., LTD.	No
TMK 15-00097	1/27/2015	7/2/2023	SK HYNIX and Design	SK HOLDINGS CO., LTD.	No

CBP IPR RECORDATION — JANUARY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 15-00098	1/27/2015	12/4/2021	On and Design (Onstar Button Logo)	ONSTAR, LLC	No
TMK 15-00099	1/27/2015	9/25/2023	SK HYNIX and Design	SK HOLDINGS CO., LTD.	No
TMK 15-00100	1/27/2015	1/22/2024	SK HYNIX and Design	SK Holdings Co., LTD.	No
TMK 15-00095	1/27/2015	7/2/2022	ON STAR and Design (Onstar Logo)	ONSTAR, LLC	No
TMK 15-00101	1/30/2015	10/1/2018	DESIGN ONLY (Prancing Horse)	Ferrari S.p.A.	No

Total Records: 156

Date as of: 2/10/2015