Bureau of Customs and Border Protection

Department of the Treasury

19 CFR PART 10

CBP Dec. 06–06

USCBP–2006–0012

RIN 1505–AB64

DOMINICAN REPUBLIC—CENTRAL AMERICA—UNITED STATES FREE TRADE AGREEMENT

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

ACTION: Interim rule.

SUMMARY: This document amends the Customs and Border Protection ("CBP") regulations on an interim basis to set forth the conditions and requirements that apply for purposes of submitting requests to Customs and Border Protection for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive application of preferential tariff treatment under the Dominican Republic—Central America—United States Free Trade Agreement.

EFFECTIVE DATE: Interim rule effective on March 7, 2006; comments must be received by May 8, 2006.

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–2006–0012.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

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, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Robert Abels, Textile Operations, Office of Field Operations (202) 344–1959.

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

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these procedures 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

The Dominican Republic—Central America—United States Free Trade Agreement ("CAFTA–DR" or "Agreement") was entered into by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. The U.S. Congress approved the CAFTA–DR in the Dominican Republic-Central America-United States Free Trade

Agreement Implementation Act (the "Act"), Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*).

Section 205 of the Act implements Article 3.20 of the CAFTA–DR by providing for the retroactive application of the preferential tariff provisions of the Agreement with respect to qualifying textile or apparel goods of eligible CAFTA–DR countries that were entered on or after January 1, 2004, and before the date of entry into force of the Agreement for that country. Specifically, section 205(a) provides that, notwithstanding 19 U.S.C. 1514 or any other provision of law, an entry of a textile or apparel good: (1) of a CAFTA–DR country that the United States Trade Representative has designated as an eligible country for purposes of section 205; (2) that would have qualified as an originating good under section 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; (3) that was made on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to that country; and (4) for which customs duties were paid in excess of the applicable rate of duty for that good set out in Annex 3.3 of the Agreement, will be liquidated or reliquidated at the applicable rate of duty for that good set out in Annex 3.3 of the Agreement, and the Secretary of the Treasury will refund any excess customs duties paid with respect to that entry.

Section 205(b) of the Act provides that the United States Trade Representative will determine which CAFTA–DR countries are eligible countries for purposes of this section and will publish a list of those countries in the **Federal Register.**

Section 205(c) of the Act provides that liquidation or reliquidation may be made under section 205(a) with respect to an entry of a textile or apparel good only if a request therefor is filed with CBP, within such period as CBP shall establish by regulation in consultation with the Secretary of the Treasury, that contains sufficient information to enable CBP: (1) to locate the entry or to reconstruct the entry if it cannot be located; and (2) to determine that the good satisfies the conditions set out in section 205(a).

Section 205(d) states that, as used in section 205, the term "entry" includes a withdrawal from warehouse for consumption.

Pursuant to section 205(c) of the Act, CBP, in consultation with the Department of the Treasury, has determined that requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods of an eligible CAFTA–DR country must be filed with CBP by the later of December 31, 2006, or the date that is 90 days after the entry into force of the Agreement with respect to that country. As required by section 205(c) of the Act, CBP is amending the CBP regulations by adding a new Subpart J to Part 10 and new § 10.699 to set forth the time period within which requests for refunds must be submitted to CBP, as well as the other legal condi-

tions and requirements that apply for purposes of requesting refunds pursuant to section 205 of the Act.

It is noted that, in accordance with the recent decision of the U.S. Court of Appeals for the Federal Circuit in Orlando Foods Corp. v. United States, No. 04–1612 (Federal Cir. Sept. 14, 2005), new § 10.699 provides that any refund of excess customs duties made pursuant to that section will be accompanied by interest from the date of the affected entry.

Inapplicability of Notice and Delayed Effective Date Requirements

Under the Administrative Procedure Act ("APA") (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard 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 this interim rule involves a foreign affairs function of the United States because it implements certain preferential tariff treatment provisions of the CAFTA–DR.

In addition, section 553(b)(B) of the APA provides that notice and public procedure are not required when an agency for good cause finds them impracticable, unnecessary, or contrary to the public interest. CBP finds that providing notice and public procedure for these regulations would be impracticable, unnecessary, and contrary to the public interest because they set forth procedures that the public needs to know as soon as possible in order to claim the benefit of the retroactive tariff preference provisions of the Act.

Finally, sections 553(d)(1) and (d)(3) of the APA exempt agencies from the requirement of publishing notice of final rules at least 30 days prior to their effective date when a substantive rule grants or recognizes an exemption or relieves a restriction and when the agency finds that good cause exists for not meeting the advance publication requirement. For the reasons described above, CBP has determined that these regulations grant an exemption and relieve restrictions and that good cause exists for dispensing with a delayed effective date.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements certain prefer-

ential tariff treatment provisions of an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that 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

These regulations are being issued without prior notice and public procedure pursuant to the APA, as described above. For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) on February 22, 2006, under control number 1651–0125.

The collection of information in these regulations is in § 10.699. This information is required in connection with requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive application of preferential tariff treatment under the CAFTA–DR and the Act and will be used by CBP to determine eligibility for such refunds under the CAFTA–DR and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 4,000 hours.

Estimated average annual burden per respondent: 96 minutes.

Estimated number of respondents: 2,500.

Estimated annual frequency of responses: 4.

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 Homeland Security-, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

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 delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference Programs, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

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

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

1. The general authority citation for Part 10 continues, and the specific authority for new Subpart J 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;

* * * * *

Section 10.699 also issued under Pub. L. 109–53, 119 Stat. 462.

2. Part 10, CBP regulations, is amended by adding a new Subpart J to read as follows:

Subpart J – DOMINICAN REPUBLIC—CENTRAL AMERICA—UNITED STATES FREE TRADE AGREEMENT

Retroactive Preferential Tariff Treatment for Textile and Apparel Goods

§ 10.699 Refunds of Excess Customs Duties

(a) *Applicability.* The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR or Agreement) was entered into by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. The Congress approved the CAFTA–DR in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the Act), Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*). Section 205 of the Act provides for the retroactive application of the Agreement and payment of refunds for any excess duties paid with respect to entries of textile and apparel goods of eligible CAFTA–DR countries that meet certain conditions and requirements. Those conditions and requirements are set forth in paragraphs (b) and (c) of this section.

(b) *General.* Notwithstanding 19 U.S.C. 1514 or any other provision of law, and subject to paragraph (c) of this section, a textile or

apparel good of an eligible CAFTA–DR country that was entered or withdrawn from warehouse for consumption on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to that country will be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and CBP will refund any excess customs duties paid with respect to such entry, with interest accrued from the date of entry, provided:

(1) The good would have qualified as an originating good under § 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; and

(2) Customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid.

(c) *Request for liquidation or reliquidation.* Liquidation or reliquidation may be made under paragraph (b) of this section with respect to an entry of a textile or apparel good of an eligible CAFTA–DR country only if a request for liquidation or reliquidation is filed with the CBP port where the entry was originally filed by the later of December 31, 2006, or the date that is 90 days after the date of the entry into force of the Agreement for that country, and the request contains sufficient information to enable CBP:

(1) To locate the entry or to reconstruct the entry if it cannot be located; and

(2) To determine that the good satisfies the conditions set forth in paragraph (b) of this section.

(d) *Definitions.* For purposes of this section:

(1) "Eligible CAFTA–DR country" means a country that the United States Trade Representative has determined, by notice published in the **Federal Register**, to be an eligible country for purposes of section 205 of the Act; and

(2) "Textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), other than a good listed in Annex 3.29 of the Agreement.

DEBORAH J. SPERO,
Acting Commissioner of
Customs and Border Protection.

Approved: February 28, 2006

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

[Published in the Federal Register, March 7, 2006 (FR 11304)]

(CBP Dec. 06–07)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR FEBRUARY, 2006

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 06-04 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): February 20, 2006

Brazil real

February 6, 2006	0.457771
February 7, 2006	0.456600
February 8, 2006	0.455539
February 9, 2006	0.460829
February 10, 2006	0.462278
February 11, 2006	0.462278
February 12, 2006	0.462278
February 13, 2006	0.464706
February 14, 2006	0.467836
February 15, 2006	0.469594
February 16, 2006	0.472590
February 17, 2006	0.472367
February 18, 2006	0.472367
February 19, 2006	0.472367
February 20, 2006	0.472367
February 21, 2006	0.470810
February 22, 2006	0.466636
February 23, 2006	0.467836
February 24, 2006	0.469638
February 25, 2006	0.469638
February 26, 2006	0.469638
February 27, 2006	0.465441
February 28, 2006	0.472144

Dated: March 1, 2006

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

(CBP Dec. 06–08)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR FEBRUARY, 2006

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

Holiday(s): February 20, 2006

European Union euro:

February 1, 2006	1.209200
February 2, 2006	1.210000
February 3, 2006	1.202100
February 4, 2006	1.202100
February 5, 2006	1.202100
February 6, 2006	1.197100
February 7, 2006	1.197400
February 8, 2006	1.193500
February 9, 2006	1.196300
February 10, 2006	1.192000
February 11, 2006	1.192000
February 12, 2006	1.192000
February 13, 2006	1.190500
February 14, 2006	1.189500
February 15, 2006	1.188400
February 16, 2006	1.188200
February 17, 2006	1.190600
February 18, 2006	1.190600
February 19, 2006	1.190600
February 20, 2006	1.190600
February 21, 2006	1.191200
February 22, 2006	1.190500
February 23, 2006	1.192300
February 24, 2006	1.188200
February 25, 2006	1.188200
February 26, 2006	1.188200
February 27, 2006	1.186000
February 28, 2006	1.192500

South Korea won:

February 1, 2006	0.001040
February 2, 2006	0.001029
February 3, 2006	0.001031
February 4, 2006	0.001031
February 5, 2006	0.001031
February 6, 2006	0.001038
February 7, 2006	0.001034
February 8, 2006	0.001031
February 9, 2006	0.001029

South Korea won: (continued):

February 10, 2006	0.001033
February 11, 2006	0.001033
February 12, 2006	0.001033
February 13, 2006	0.001024
February 14, 2006	0.001032
February 15, 2006	0.001027
February 16, 2006	0.001027
February 17, 2006	0.001028
February 18, 2006	0.001028
February 19, 2006	0.001028
February 20, 2006	0.001028
February 21, 2006	0.001033
February 22, 2006	0.001027
February 23, 2006	0.001032
February 24, 2006	0.001035
February 25, 2006	0.001035
February 26, 2006	0.001035
February 27, 2006	0.001033
February 28, 2006	0.001030

Taiwan N.T. dollar:

February 1, 2006	0.031279
February 2, 2006	0.031270
February 3, 2006	0.031172
February 4, 2006	0.031172
February 5, 2006	0.031172
February 6, 2006	0.031172
February 7, 2006	0.031037
February 8, 2006	0.030921
February 9, 2006	0.030855
February 10, 2006	0.030998
February 11, 2006	0.030998
February 12, 2006	0.030998
February 13, 2006	0.030893
February 14, 2006	0.030969
February 15, 2006	0.030912
February 16, 2006	0.030864
February 17, 2006	0.030883
February 18, 2006	0.030883
February 19, 2006	0.030883
February 20, 2006	0.030883
February 21, 2006	0.030826
February 22, 2006	0.030628
February 23, 2006	0.030760
February 24, 2006	0.030788
February 25, 2006	0.030788
February 26, 2006	0.030788

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

Taiwan N.T. dollar: (continued):

February 27, 2006	0.030817
February 28, 2006	0.030864

Dated: March 1, 2006

MARGARET T. BLOM
Acting Chief,
Customs Information Exchange.

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES: COUNTRY OF ORIGIN MARKING REQUIREMENTS FOR CONTAINERS OR HOLDERS

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Country of Origin Marking Requirement for Containers or Holders. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 58459) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 10, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
(3) Enhance the quality, utility, and clarity of the information to be collected; and Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated,
(4) electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Country of Origin Marking Requirements for Containers or Holders

OMB Number: 1651–0057

Form Number: N/A

Abstract: Containers or Holders imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 0,000

Estimated Time Per Respondent: 15 seconds

Estimated Total Annual Burden Hours: 41

Estimated Total Annualized Cost on the Public: N/A

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–344–1429.

Dated: March 2, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12383)]

PROPOSED COLLECTION; COMMENT REQUEST

Application and Approval to Manipulate, Examine, Sample, or Transfer Goods

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

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application and Approval to Manipulate, Examine, Sample, or Transfer Goods. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to Tracey Denning, Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Application & Approval to Manipulate, Examine, Sample, or Transfer Goods

OMB Number: 1651–0006

Form Number: CBP Form–3499

Abstract: CBP Form-3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under CBP supervision. This form is also an applica-

tion for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions and individuals

Estimated Number of Responses: 151,140

Estimated Time Per Response: 6 minutes

Estimated Total Annual Burden Hours: 15,114

Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12382)]

Application for Exemption From Special Landing Requirements (Overflight)

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

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Exemption from Special Landing Requirements (Overflight). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Application for Exemption from Special Landing Requirements (Overflight)

OMB Number: 1651–0087

Form Number: CBP Forms 442 and 442A

Abstract: CBP Forms 442 and 442A are used by private flyers to obtain a waiver for landing requirements and normal CBP processing at designated airports along the southern border.

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

Type of Review: Extension (without change)

Affected Public: Individuals

Estimated Number of Respondents: 760, 655

Estimated Time Per Response: 3 minutes

Estimated Total Annual Burden Hours: 13,266

Estimated Total Annualized Cost on the Public: N/A

Dated: March 2, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12386)]

Application for Identification/Smart Card

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

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Identification/Smart Card. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Application for Identification/Smart Card
OMB Number: 1651–0008
Form Number: CBP Form–3078

Abstract: CBP Form 3078 is used by licensed Cartmen, Lightermen, Warehousemen, brokerage firms, foreign trade zones, container station operators, their employees, and employees requiring access to CBP secure areas to apply for an identification card so that they may legally handle merchandise which is in CBP custody.

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

Type of Review: Extension (without change)
Affected Public: Business or other for-profit institutions
Estimated Number of Responses: 46,050
Estimated Time Per Respondent: 13 minutes
Estimated Total Annual Burden Hours: 9,962
Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 10, 2006 (FR 12385)]

Application/Permit/Special License, Unlading/Lading Overtime Service

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application/Permit/Special License, Unlading/Lading Overtime Service. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Branch, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Application/Permit/Special License, Unlading/Lading Overtime Service

OMB Number: 1651–0005

Form Number: Form CBP–3171

Abstract: Form CBP–3171, is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers and for overtime services of CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment.

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 399,000

Estimated Time Per Respondent: 8 minutes

Estimated Total Annual Burden Hours: 51,870

Estimated Total Annualized Cost on the Public: N/A

Dated: March 10, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 10, 2006 (FR 12381)]

Application to Use Automated Commercial Environment (ACE)

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

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Application to Use the Automated Commercial Environment (ACE)

OMB Number: 1651–0105

Form Number: N/A

Abstract: CBP collects basic information from companies participating in ACE pilots in order to establish an account structure for each company.

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

Type of Review: Extension
Affected Public: Businesses
Estimated Number of Respondents: 1,100
Estimated Time Per Respondent: 2 minutes
Estimated Total Annual Burden Hours: 33
Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12380)]

Cargo Container and Road Vehicle Certification for Transport under Customs Seal

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

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Cargo Container and Road Vehicle Certification For Transport Under Customs Seal. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

OMB Number: 1651–0124

Form Number: N/A

Abstract: This information collection is used in a voluntary program to receive internationally-recognized CBP certification that intermodel container/road vehicles meet construction requirements of international Customs conventions. Such certification facilitates International trade by reducing intermediate international controls.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 3,000

Estimated Time Per Respondent: 3.5 hours

Estimated Total Annual Burden Hours: 10,600

Estimated Annualized Cost to the Public: N/A

Dated: March 10, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 10, 2006 (FR 12387)]

Certificate of Registration

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

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Border of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Certificate of Registration

OMB Number: 1651–0010

Form Number: Forms 4455 and 4457

Abstract: The Certificate of Registration is used to expedite free entry or entry at a reduced rate on foreign made personal articles

that are taken abroad. The articles are dutiable each time they are brought into the United States unless there is acceptable proof of prior possession.

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

Type of Review: Extension (without change)
Affected Public: Individuals, Travelers
Estimated Number of Respondents: 200,000
Estimated Time Per Respondent: 3 minutes
Estimated Total Annual Burden Hours: 10,000
Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12389)]

Crew Members Declaration

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

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or

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

Title: Crew Members Declaration

OMB Number: 1651–0021

Form Number: Form 5129

Abstract: This document is used to accept and record importations of merchandise by crewmembers, and to enforce agricultural quarantines, the currency reporting laws, and the revenue collection laws.

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

Type of Review: Extension (without change)

Affected Public: Individuals

Estimated Number of Respondents: 5,968,351

Estimated Time Per Respondent: 3 minutes

Estimated Total Annual Burden Hours: 298,418

Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12386)]

Customs Declaration (Form 6059B)

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

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Rm 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Customs Declaration

OMB Number: 1651–0009

Form Number: CBP Form 6059B

Abstract: The Customs Declaration, CBP Form 6059B, requires basic information to facilitate the clearance of persons and goods arriving in the United States and helps CBP officers determine if any duties of taxes are due. The form is also used for the enforcement of CBP and other agencies laws and regulations.

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

Type of Review: Extension (without change)
Affected Public: Traveling public
Estimated Number of Respondents: 60,000,000
Estimated Time Per Respondent: 4 minutes and 5 seconds
Estimated Total Annual Burden Hours: 4,038,000
Estimated Total Annualized Cost on the Public: N/A

Dated: March 10, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12387)]

Declaration for Free Entry of Unaccompanied Articles

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

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical util-

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

Title: Declaration for Free Entry of Unaccompanied Articles
OMB Number: 1651–0014
Form Number: Form–3299

Abstract: The Declaration for Free Entry of Unaccompanied Articles, Form 3299, is prepared by the individual or the broker acting as agent for the individual, or in some cases, the CBP officer. It serves as a declaration for duty-free entry of merchandise under one of the applicable provisions of the tariff schedule.

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

Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 10,000
Estimated Time Per Respondent: 10 minutes
Estimated Total Annual Burden Hours: 25,000
Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12389)]

Declaration of Free Entry of Returned American Products

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

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Free entry of Returned American

Products. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Declaration of Free entry of Returned American Products

OMB Number: 1651–0011

Form Number: CBP Form–3311

Abstract: This collection of information is used as a supporting documentation to substantiate a claim for duty free status for returning American products.

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals,

Estimated Number of Respondents: 12,000

Estimated Time Per Respondent: 3.5 hours

Estimated Total Annual Burden Hours: 51,000
Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12388)]

Exportation of Used Self-Propelled Vehicles

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

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of

capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Exportation of Used-Propelled Vehicles
OMB Number: 1651–0054
Form Number: None
Abstract: The Exportation of Used-Propelled Vehicles requires the submission of documents verifying vehicle ownership of exporters for exportation of vehicles in the United States.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Individuals, Businesses.
Estimated Number of Responses: 750,000
Estimated Time Per Response: 10 minutes
Estimated Total Annual Burden Hours: 125,000
Estimated Total Annualized Cost on the Public: N/A

Dated: March 10, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 10, 2006 (FR 12390)]

Foreign Assembler's Declaration (with Endorsement by Importer)

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

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

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

OMB Number: 1651–0031

Form Number: N/A

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

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals

Estimated Number of Respondents: 2,730

Estimated Time Per Respondent: 50 minutes

Estimated Total Annual Burden Hours: 302,402
Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12382)]

Free Admittance Under Conditions of Emergency

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

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the

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

Title: Free Admittance Under Conditions of Emergency
OMB Number: 1651–0044
Form Number: N/A
Abstract: This collection of information will be used in the event of emergency or catastrophic event to monitor goods temporarily admitted for the purpose of rescue or relief.
Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Nonprofit Assistance Organizations
Estimated Number of Respondents: 1
Estimated Time Per Respondent: 1 minute
Estimated Total Annual Burden Hours: 1
Estimated Total Annualized Cost on the Public: N/A

Dated: March 10, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12381)]

General Declaration (Outward/Inward)

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

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: General Declaration (Outward/Inward)

OMB Number: 1651–0002

Form Number: Form CBP–7507

Abstract: Form CBP–7507 allows the agent or pilot to make entry or exit of the aircraft, as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 1,000,000

Estimated Time Per Response: 5 minutes

Estimated Total Annual Burden Hours: 83,333
Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12384)]

Importers ID Input Record

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

ACTION: Notice and request for comments.

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of

capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Importers ID Input Record
OMB Number: 1651–0064
Form Number: CBP Form 5106
Abstract: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection.
Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses/Institutions
Estimated Number of Respondents: 500
Estimated Time Per Respondent: 12 minutes
Estimated Total Annual Burden Hours: 100
Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, March 10, 2006 (FR 12384)]

Lien Notice

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

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection invites the general public and other Federal agencies to comment on an information collection requirement concerning the Lien Notice (CBP Form–3485). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Dennng, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344–1429.

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

Title: Lien Notice

OMB Number: 1651–0012

Form Number: CBP Form–3485

Abstract: The Lien Notice, CBP Form–3485, enables the carriers, cartmen, and similar businesses to notify CBP that a lien exists against an individual/business for non-payment of freight charges, etc., so that CBP will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied or discharged.

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

Type of Review: Extension (without change)

Affected Public: Individuals, Businesses

Estimated Number of Respondents: 112,000

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 9,296
Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 10, 2006 (FR 12388)]

Petroleum Refineries in Foreign Trade Subzones

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

ACTION: Notice and request for comments

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

DATES: Written comments should be received on or before May 9, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of

capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Petroleum Refineries in Foreign Trade Subzones

OMB Number: 1651–0063

Form Number: None

Abstract: The Petroleum Refineries in Foreign Trade Subzones is a rule that amended the regulations by adding special procedures and requirements governing the operations of crude petroleum and refineries approved as foreign trade zones.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 18

Estimated Time Per Respondent: 732

Estimated Total Annual Burden Hours: 13,176

Estimated Total Annualized Cost on the Public: N/A

Dated: March 1, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, March 10, 2006 (FR 12383)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, March 8, 2006

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

SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

MODIFICATION OF A RULING LETTER, REVOCATION OF A RULING LETTER, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF LEUCOANTHOCYANIN AND/OR SILYMARIN (MILK THISTLE)

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

ACTION: Notice of modification of a tariff classification ruling letter, revocation of a tariff classification ruling letter, and revocation of treatment relating to the tariff classification of leucoanthocyanin and/or silymarin (milk thistle).

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 is modifying a ruling concerning the tariff classification of silymarin and leucoanthocyanin, and revoking a ruling concerning the tariff classification of silymarin (milk thistle) under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Notice of the proposed action was published on June 22, 2005, in Volume 39, Number 26, of the CUSTOMS BULLETIN. Notice of final action was published on September 28, 2005, in Volume 39, Number 40 of the CUSTOMS BULLETIN. In this notice of final action, CBP stated that no comments were received in response to the notice of proposed action. However, because a comment was timely received by CBP but not forwarded to the Office of Regulations and

Rulings for consideration before publication of final action, CBP withdrew the notice of final action in order to consider the comment before taking final action. Accordingly, notice of withdrawal of final action was published on November 16, 2005, in Volume 39, Number 47 of the CUSTOMS BULLETIN. CBP has now considered the comment (described further below) before taking the final action of which this notice advises.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 21, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, Commercial Trade and Facilitation Division, Office of Regulations and Rulings, at (202) 572–8883.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the June 22, 2005, CUSTOMS BULLETIN, Volume 39, Number 26, proposing to modify New York Ruling Letter (NY) 814027, dated February 2, 1996, revoke Headquarters Ruling Letter (HQ) 964338, dated March 28, 2001, and to revoke any treatment accorded to substantially identical transactions. At that time, the proposed ruling to modify NY 814027 was HQ 967629 and the proposed ruling to re-

voke HQ 964338 was HQ 967575. Notice of final action was published on September 28, 2005, in Volume 39, Number 40 of the CUSTOMS BULLETIN. In this notice of final action, CBP stated that no comments were received in response to the notice of proposed action. However, because a comment was timely received by CBP but not forwarded to the Office of Regulations and Rulings for consideration before publication of final action, CBP withdrew the notice of final action in order to review and consider the comment before taking final action. Accordingly, notice of withdrawal of final action was published on November 16, 2005, in Volume 39, Number 47 of the CUSTOMS BULLETIN. CBP considered the comment (described further below) before taking the final action of which this notice advises. In this action, the ruling modifying NY 814027 is HQ 967972 (replacing HQ 967629) and the ruling revoking HQ 964338 is now HQ 967971 (replacing HQ 967575).

As stated in the notice of proposed modification and revocation, the notice covered any rulings on this merchandise which may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should 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 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 subsequent to the effective date of the final decision on this notice.

The classification of silymarin in NY 814027 and HQ 964338 is not in conformity with later determinations that CBP has made on the substance, which CBP considers to be correct. Additionally, the classification of leucoanthocyanin in NY 814027 is not consistent with the classifications of products substantially similar to leucoanthocyanin set forth in HQ 966566, dated October 21, 2003, which CBP also considers to be correct.

In NY 814027, silymarin (identified as "Milk thistle (Silybum Marianum)") and leucoanthocyanin (identified as "Leucoanthocyanins [(grape seed) Vitis Vinifera]") were individually classified in subheading 1302.19.4040, HTSUS, the provision for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other:

Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other, Other."

Then, in HQ 964338 and HQ 966566, silymarin and products substantially similar to leucoanthocyanin, respectively, were individually classified in subheading 3824.90.28, HTSUS, the provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other." CBP considers the classification of products substantially similar to leucoanthocyanin set forth in HQ 966566 to be correct because the products classified in that ruling are purified from plant matter that is well beyond that of an extract, yet they do not contain a separate chemically defined compound, or isomers of such a compound, as necessary for classification in Chapter 29, HTSUS.

However, in HQ 964338, we excluded classification of silymarin in Chapter 29, HTSUS, because the product consists of more than isomers of a separate chemically defined compound under Chapter 29, note 1(b). We now have determined that the remaining mixture can be considered impurities within the definition of the chapter note. Hence, the correct classification for silymarin is in subheading 2932.99.61, HTSUS, the provision for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Products described in add'l U.S. note 3 to section VI."

As mentioned above, one comment was received in response to the notice published in the June 22, 2005, CUSTOMS BULLETIN, Volume 39, Number 26, proposing to revoke Headquarters Ruling Letter HQ 964338, dated March 28, 2001, and to modify New York Ruling Letter (NY) 814027, dated February 2, 1996, and to revoke any treatment accorded to substantially identical transactions. The comment received opposes modification of NY 814027. The commenter states that "while [the company to which the ruling was issued] maintains that the current classification of the two extracts under subheading 1302.19.40.40, HTSUS, is correct, the company also maintains that if Heading 1302, HTS does not apply, that the instant products qualify as "medicaments" under subheading 3003.90.00.00, HTSUS."

We disagree with the commenter. Pursuant to the analysis set forth in HQ 967972, silymarin and leucoanthocyanin are not classifiable under subheading 1302.19.40.40, HTSUS. Furthermore, the products are not classified in Heading 3003, HTSUS, as "medicaments" because they are neither intended nor sold for the treatment or prevention of any medical condition. As stated in the Explanatory Notes to Heading 3003, the heading covers ". . . medicinal preparations for use in the internal or external treatment or prevention of human or animal ailments." Silymarin and leucoanthocyanin, how-

ever, are marketed and sold as dietary supplements, not medicaments. For a more complete discussion on medicaments and dietary supplements, see HQ 964673, dated February 4, 2002 (on the classification of Joint Advantage® tablets) and/or HQ 966771, dated September 15, 2004 (on the classification of "Promensil," Red Clover).

CBP, pursuant to 19 U.S.C. 1625(c)(1), is revoking HQ 964338, and modifying NY 814027 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967971 and HQ 967972, which are set for the as attachments "A" and "B", respectively, to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 7, 2006

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967971
March 6, 2006
CLA–2 RR:CTF:TCM 967971 BtB
CATEGORY: CLASSIFICATION
TARIFF NO.: 2932.99.6100

MR. MICHAEL R. TARTARO
BYRON CHEMICAL COMPANY, INC.
40–11 23rd Street
Long Island City, NY 11101

Re: Revocation of HQ 964338: Silymarin 80% (Milk Thistle Standarized Extract)

DEAR MR. TARTARO:

This is in regard to Headquarters Ruling Letter (HQ) 964338, dated March 28, 2001, concerning the classification of silymarin under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, we issued a decision on Protest 1001–99–103909, in which the silymarin was classified in subheading 3824.90.28, HTSUS, as a preparation of the chemi-

cal or allied industries, not elsewhere specified or included. We have reviewed HQ 964338 and have found it to be in error. Therefore, this ruling revokes HQ 964338.

Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 1001–99–103909 was final on both the protestant and CBP. Therefore, this ruling has no effect on those entries.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the June 22, 2005, CUSTOMS BULLETIN, Volume 39, Number 26, proposing to revoke HQ 964338, and to revoke any treatment accorded to substantially identical transactions. While we did receive a comment in response to this notice, the comment opposed the modification of a different ruling and was not directed at the revocation of HQ 964338.

FACTS:

According to Customs Lab Report #2–1999–20518, dated January 25, 1999, Silymarin 80% is a yellow powder that contains 80% mixture of isomers of silymarin (silybin, silicristin and silidianin). It is imported in bulk.

Silymarin 80% is produced from milk thistle seeds. The seeds are milled into a cake. The cake is then subjected to 3–4 percolations in acetone for about 24 hours at 45 degrees centigrade. The filtered percolate is then concentrated by distillation under vacuum at 50–60 degrees centigrade to remove as much acetone as possible. This concentrate is then washed two times with 50 kg of cyclohexane to defat the product. The remaining concentrate is then dried under vacuum at 65–70% centigrade.

ISSUE:

What is the proper classification of Silymarin 80% under the HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the U.S. 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 that 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.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related 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. In interpreting 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).

The HTSUS headings under consideration are as follows:

2932	Heterocyclic compounds with oxygen hetero-atom(s) only:
	Other:
	Aromatic:
	Other:
2932.99.61	Products described in additional U.S. note 3 to section VI.

* * * * *

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:
	Other:
3824.90	Other
	Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:
3824.90.28	Other

Additional U.S. Note 3 to Section VI, HTSUS, provides:

The term "products described in additional U.S. note 3 to section VI" refers to any product not listed in the Chemical Appendix to the Tariff Schedule and—

(a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or

(b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known.

Chapter Note 1 to Chapter 29 states, in pertinent part, the following:

Except where the context otherwise requires, the headings of this chapter apply only to:

(a) Separate chemically defined organic compounds, whether or not containing impurities;

(b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27);

In HQ 964338, we stated the following: "Although considered, classification of the product in Chapter 29, HTSUS, is excluded because there is no evidence that the merchandise, as imported, consists only of isomers of silymarin." We now consider this statement to be incorrect.

Chapter 29, note 1(b) allows for mixtures of isomers containing impurities. Here, the mixture of isomers makes up 80% of the product. The other 20% is remainder from the starting material and a small amount of solvent. We consider this remainder to constitute "impurities" within the terms of the chapter note.

Within Chapter 29, silymarin is undisputedly a heterocyclic compound of heading 2932, HTSUS, as it includes six-membered rings containing oxygen atoms in the ring. Hence, heading 3824, a basket provision, can no longer describe this merchandise, which is more specifically provided for elsewhere. Using GRI 6, subheading 2932.99.61, HTSUS, describes this product as an other aromatic heterocyclic compound for which the CAS registry number is not listed in the Chemical Appendix under the terms of U.S. note 3 to section VI.

We note that silymarin is not a "medicament" of heading 3003, HTSUS, because it is neither intended nor sold for the treatment or prevention of any medical condition. As stated in the Explanatory Notes to Heading 3003, the heading covers ". . . medicinal preparations for use in the internal or external treatment or prevention of human or animal ailments." Silymarin, however, is marketed and sold as a dietary supplement, not a medicament. For a more complete discussion on medicaments and dietary supplements, see HQ 964673, dated February 4, 2002 (on the classification of Joint Advantage® tablets) and/or HQ 966771, dated September 15, 2004 (on the classification of "Promensil," Red Clover).

HOLDING:

Silymarin is classified in subheading 2932.99.6100, HTSUSA (annotated), the provision for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Products described in additional U.S. note 3 to section VI." The general, column 1 rate of duty under the 2006 HTSUS is 6.5% *ad valorem*, with reference to headings in Chapter 99, HTSUS.

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.

EFFECT ON OTHER RULINGS:

HQ 964338, dated March 28, 2001, is hereby revoked.

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

MYLES B. HARMON,
Director,
Commercial Trade and Facilitation Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967972
March 2, 2006
CLA–2 RR:CTF:TCM 967972 BtB
CATEGORY: CLASSIFICATION
TARIFF NO.: 3824.90.2800, 2932.99.6100

BRIAN S. GOLDSTEIN, ESQ.
TOMPKINS & DAVIDSON
One Astor Plaza
1515 Broadway, 43rd Fl.
New York, NY 10036–8901

RE: Modification of NY 814027; the tariff classification of Silymarin (milk thistle) and Leucoanthocyanin

DEAR MR. GOLDSTEIN:

This is in regard to New York Ruling Letter (NY) 814027, dated February 2, 1996, issued to you on behalf of your client, Indena USA Inc. (Indena), regarding the classification of silymarin (identified as "Milk thistle (Silybum Marianum)") and leucoanthocyanin (identified as "Leucoanthocyanins [(grape seed) Vitis Vinifera]") under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). That ruling held that four products, including silymarin and leucoanthocyanin, were classified in subheading 1302.19.4040, HTSUS, the provision for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other, Other."

We have reviewed NY 814027 and, with respect to two of the four products classified, have found it to be in error. Therefore, this ruling modifies NY 814027.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the June 22, 2005, CUSTOMS BULLETIN, Volume 39, Number 26, proposing to modify NY 814027, and to revoke any treatment accorded to substantially identical transactions. We received one comment, from you, opposing modification of NY 814027. Your comment is addressed below.

FACTS:

The silymarin here in issue is a yellow powder that contains 80% mixture of isomers of silymarin (silybin, silicristin and silidianin). Silymarin 80% is produced from milk thistle seeds. The seeds are milled into a cake, subjected to percolation in a solvent, filtered, and concentrated by distillation under vacuum to remove as much solvent as possible. This concentrate is then washed, defatted, and dried.

The leucoanthocyanin here in issue is a brownish powder consisting of 90–95% oligomeric proanthocyanidin (OPC). OPC is a mixture of proanthocyanidin compounds in different degrees of polymerization. Some of the OPCs are catechins with a chemical formula of $C_{15}H_{14}O_6$ (The Merck Index, 11th ed.), dimers (two degrees), trimers (three degrees), etc. Due to these varying

states of polymerization, the OPCs are not comprised of a single chemical compound, although the main chemical structures are identical. Leucoanthocyanin can be produced from either pine bark or grape seed.

According to flow charts submitted by Indena, all of the products are obtained through extraction and refining processes that target a particular family of chemicals in the plant such as isomers of silymarin or OPCs.

In the comment that you submitted opposing modification of NY 814027, you stated that "while Indena maintains that the current classification of the two extracts under subheading 1302.19.40.40, HTSUS, is correct, the company also maintains that if Heading 1302, HTS does not apply, that the instant products qualify as "medicaments" under subheading 3003.90.00.00, HTSUS."

ISSUE:

What is the proper classification of the silymarin and leucoanthocyanin extracts under the HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the U.S. 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 that 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.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related 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. In interpreting 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).

Furthermore, "it is a well-established principle that classification of an imported article must rest upon its condition as imported." E. T. Horn Company v. United States, Slip Op. 2003–20, (CIT, 2003), (citing Carrington Co. v. United States, 61 CCPA 77, 497 F.2d 902, 905 (CCPA 1974), United States v. Baker Perkins, Inc., 46 CCPA 128, (1959)).

The HTSUS provisions under consideration are as follows:

1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
	Vegetable saps and extracts:
1302.19	Other:
	Ginseng; substances having anesthetic, prophylactic or therapeutic properties:

1302.19.40 Other . . . . . .

* * * * * * * * * * * *

2932 Heterocyclic compounds with oxygen hetero-atom(s) only:

Other:

2932.99 Other:

Aromatic:

Other:

2932.99.61 Products described in additional U.S. note 3 to section VI.

* * * * * * * * * *

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

3824.90 Other:

Other:

Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:

3824.90.28 Other

Chapter Note 1 to Chapter 29 states, in pertinent part, the following:

Except where the context otherwise requires, the headings of this chapter apply only to:

(a) Separate chemically defined organic compounds, whether or not containing impurities;

(b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27);

* * * * * *

EN 13.02 states, in pertinent part, the following:

(A) Vegetable saps and extracts.

The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents), **provided** that they are not specified or included in more specific headings of the Nomenclature (see list of exclusions at the end of Part (A) of this Explanatory Note).

These saps and extracts differ from the essential oils, resinoids and extracted oleoresins of heading 33.01, in that, apart from volatile odoriferous constituents, they contain a far higher proportion of other plant

substances (e.g., chlorophyll, tannins, bitter principles, carbohydrates and other extractive matter).

The saps and extracts classified here include:

(1) **Opium**, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50% by weight of alkaloids are **excluded** from this heading (see Note 1 (f) to this Chapter).

* * * * *

(4) **Pyrethrum extract**, obtained mainly from the flowers of various pyrethrum varieties (e.g., *Chrysanthemum cinerariaefolium*) by extraction with an organic solvent such as normal hexane or "petroleum ether".

* * * * *

(11) **Quassia amara extract**, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America. Quassin, the principal bitter extract of the wood of the *Quassia amara*, is a heterocyclic compound of **heading 29.32.**

* * * * *

(18) **Papaw juice**, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.) Papain is **excluded (heading 35.07).**

* * * * *

(20) **Cashew nutshell extract.** The polymers of cashew nutshell liquid extract are, however, **excluded** (generally **heading 39.11**).

* * * * *

Examples of **excluded** preparations are: . . .

(iv) **Intermediate products for the manufacture of insecticides**, consisting of pyrethrum extracts diluted by addition of mineral oil in such quantities that the pyrethrins content is less than 2%, or with other substances such as synergists (e.g., piperonyl butoxide) added (**heading 38.08**).

All four of the substances in NY 814027 are obtained by sophisticated means such as solvent-solvent extraction, distillation, dialysis, chromatographic procedures, electrophoresis, etc. These processes result in a substance containing a targeted chemical compound or compounds along with ubiquitous plant material that need not be further removed for the manufacturers' purpose.

Heading 1302, HTSUS, describes vegetable extracts. The ENs provide that vegetable products are usually obtained by natural exudation or by incision, or extracted by solvents. Furthermore, the EN distinguishes products of heading 1302, HTSUS, from products of heading 3301, HTSUS, by the amount of plant material they contain. Research into the extracts described by the ENs, however, reveals a variety of extraction and refining techniques. For instance, in HQ 963848, dated April 20, 2002, CBP took note of the EN that allows pyrethrum products containing over 2% pyrethrum to remain

classified in heading 1302, HTSUS, in classifying a 50% pyrethrum product in heading 1302, HTSUS. We did so even though the original extracted oleoresin had been further purified removing much of the variety of material in the pyrethrum plant and thereby concentrating the pyrethrum content.

However, there appears to be a limit on the degree and extent of purification that can occur for the product to remain in heading 1302. For instance, EN 13.02, explicitly excludes certain refined extracts of opium, quassia amare, papaw juice, and cashew nut shell liquid, once the refining process concentrates a certain group of chemical compounds to a particular point. Hence, poppy straw concentrates containing more than 50% alkaloids are excluded from heading 1302. Likewise, quassin, a chemical compound extracted and refined from the quassia amara shrub is classified in Chapter 29. Papain enzyme, once purified from the extraction process of papaw juice, is classified as an enzyme of Chapter 37. And polymers extracted and refined from cashew nut shell liquid are classified in Chapter 39 as polymers.

Following the reasoning in our prior rulings, and the tenet that we must classify goods as imported, we note that the leucoanthocyanin consists of over 90% mixtures of oligomeric proanthocyanidins (OPCs) and the silymarin consists of at least 80% of isomers of silymarin. Therefore, silymarin and leucoanthocyanin are relatively pure chemical products and cannot be classified simply as extracts.

In HQ 964338 and in HQ 966566, silymarin and leucocyanin were each respectively classified in subheading 3824.90.28, HTSUS, the provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other." We consider this the correct result for leucoanthocyanin, because it is purified from the plant matter well beyond that of an extract, yet it does not contain a separate chemically defined compound, or isomers of such a compound, as necessary for classification in Chapter 29, HTSUS.

However, in HQ 964338, we excluded classification of silymarin 80% in Chapter 29, HTSUS, because the product consists of more than isomers of a separate chemically defined compound under Chapter 29, note 1(b). The other 20% is remainder from the starting material and a small amount of solvent. As such, we now consider this remainder to constitute "impurities" within the terms of the chapter note.

Within Chapter 29, silymarin is undisputedly a heterocyclic compound of heading 2932, HTSUS, as it includes six-membered rings containing oxygen atoms in the ring. Hence, heading 3824, a basket provision, can no longer describe this merchandise, which is more specifically provided for elsewhere. Using GRI 6, subheading 2932.99.61, HTSUS, describes this product as an other aromatic heterocyclic compound for which the CAS registry number is not listed in the Chemical Appendix under the terms of U.S. note 3 to section VI.

In regard to your contention in your comment that silymarin and leucoanthocyanin qualify as "medicaments" under subheading 3003.90.00.00, HTSUS, we find that these products are not medicaments of heading 3003, HTSUS, because they are neither intended nor sold for the treatment or prevention of any medical condition. As stated in the Explanatory Notes to Heading 3003, the heading covers ". . . medicinal preparations for use in the

internal or external treatment or prevention of human or animal ailments." Silymarin and leucoanthocyanin, however, are marketed and sold as dietary supplements, not medicaments. For a more complete discussion on medicaments and dietary supplements, see HQ 964673, dated February 4, 2002 (on the classification of Joint Advantage® tablets) and/or HQ 966771, dated September 15, 2004 (on the classification of "Promensil," Red Clover).

HOLDING:

NY 814027, dated February 2, 1996,is modified as set forth above in regard to the classification of silymarin (identified as "Milk thistle (Silybum Marianum)") and leucoanthocyanin (identified as "Leucoanthocyanins [(grape seed) Vitis Vinifera]").

Silymarin is classified in subheading 2932.99.6100, HTSUSA (annotated), the provision for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Products described in additional U.S. note 3 to section VI." The column 1, general rate of duty under the 2006 HTSUS is 6.5% *ad valorem*, with reference to headings in Chapter 99, HTSUS.

Leucoanthocyanin is classified in subheading 3824.90.2800, HTSUSA, the provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other." The column 1, general rate of duty under the 2006 HTSUS is 6.5% *ad valorem*, with reference to headings in Chapter 99, HTSUS.

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.

EFFECT ON OTHER RULINGS:

NY 814027, dated February 2, 1996, is modified as set forth above in regard to the classification of silymarin (identified as "Milk thistle (Silybum Marianum)") and leucoanthocyanin (identified as "Leucoanthocyanins [(grape seed) Vitis Vinifera]"). The classifications set forth in NY 814027 for other products remain effective.

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

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

MODIFICATION OF RULING LETTER RELATING TO VALUATION OF MANAGEMENT FEES AND EXPENSES

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

ACTION: Notice of modification of ruling letter and treatment relating to the valuation of management fees and expenses.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is modifying a ruling letter and any treatment previously accorded by CBP to substantially identical transactions, concerning the valuation of management fees and expenses. Notice of the proposed action was published in the *Customs Bulletin* on January 11, 2006. No comments were received in response to this notice.

EFFECTIVE DATE: This modification is effective for merchandise entered or withdrawn from warehouse May 21, 2006.

FOR FURTHER INFORMATION CONTACT: Gina Grier, Valuation and Special Programs Branch, (202) 572–8719.

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), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **informed compliance** and **shared responsibility.** These concepts are based on the premise that in order to maximize voluntary compliance with CBP 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 rights and responsibilities under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484, 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 declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on January 11, 2006, in the *Customs Bulletin* Vol. 38, No. 34, proposing to modify Headquarters Ruling Letter (HQ) 548316, dated July 16, 2003. This ruling related in pertinent part to the valuation of payments made by the buyer of imported merchandise for certain management services provided by a related company.

As stated in the proposed notice, this modification 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 comment 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 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 involving the same or similar issues, or the importer's or CBP's previous interpretation of the valuation laws. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of this final notice.

In HQ 548316, CBP addressed five issues concerning the determination of transaction value, including the dutiability of certain management fees paid by the buyer to a related company that was not the seller of the imported merchandise. The management fees were to be paid for specific services relating to the importer's sales. CBP held that the payments were not assists and, as such, were not additions to the price actually paid or payable. Although that holding was technically correct, it did not address the more germane issue of whether the payments are included in transaction value as part of the price actually paid or payable for the imported merchandise. HQ 548316 is being modified to include a price actually paid or payable analysis of the management fees. Under such an analysis, the modified ruling reflects that the management fees were not properly included in the price actually paid or payable for the imported merchandise, because they were not paid to, or for the benefit of, the seller and did not relate to the imported merchandise.

Pursuant to 19 U.S.C. 1625(c)(1)), CBP is modifying HQ 548316 and any other ruling not specifically identified, to reflect the proper appraisement of the merchandise pursuant to the analysis in HQ 548547, as set forth in the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: March 7, 2006

Monika R. Brenner for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 548547
VAL:RR:CTF:VS 548547 GG
CATEGORY: Valuation
March 7, 2006

MR. JOHN A. BESSICH
FOLLICK & BESSICH
33 Walt Whitman Road
Suite 204
Huntington Station, New York 11746

Re: Reconsideration of HQ 548316, dated July 16, 2003; valuation of payments for management services rendered to the buyer by a related company that is not the seller

DEAR MR. BESSICH:

This is in reference to Headquarters Ruling Letter (HQ) 548316, dated July 16, 2003, issued to you by this office regarding the valuation of certain imported women's garments. It has come to our attention that our analysis of an issue relating to payments made by the buyer for management services was incorrect. The purpose of this new letter is to modify HQ 548316 by applying the correct analysis. This should have no duty or appraisement consequences – past or future – for your client because under both analyses the payments are found to be not part of the price actually paid or payable. The modification is necessary, however, to prevent any future misunderstanding of our approach to this and similar issues. This letter is essentially a restatement of HQ 548316 except for those places where changes have been made with respect to the discussion of the management fees. As in HQ 548316, confidential treatment is being accorded this reconsideration.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2186 (1993)), notice of the proposed revocation was published on January 11, 2006, in Vol. 40, No. 3 of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS

The relevant entities involved in the proposed transaction are ABC, a corporation organized under the laws of the State of New York, and XYZ, a corporation organized under the laws of Spain. Counsel for ABC advises the Bureau of Customs and Border Protection (CBP) that ABC and XYZ are "related parties" as defined in 19 U.S.C. 1401a (g).

It is ABC's intention to market and sell [*XXXXX*] trademarked women's garments at wholesale in the United States. The garments ABC intends to import will be designed by XYZ, the owner of the [*XXXXX*] trademark. Although XYZ owns the trademark, the garments will be manufactured out-

side of the United States by manufacturers that are unrelated, as defined in section 1401a (g), to either ABC or XYZ.

ABC, in the proposed transaction, will order and purchase the garments directly from the foreign manufacturers. The terms between ABC and the manufacturers will be "FOB, port of export." ABC, according to counsel, "will not be required to pay, either directly or indirectly, any royalties, license fees, the proceeds of resale, commissions, or any other costs or charges . . . as a condition of the sale of the merchandise." XYZ will design the garments that ABC will have manufactured and will, ultimately, import and sell in the United States.

Counsel for ABC advises Customs and Border Protection that ABC and XYZ will or have already entered into four agreements. The agreements include a design agreement, a financing agreement, an administrative services agreement and a licensing agreement.

The Design Agreement

ABC and XYZ propose entering into a "Design Agreement," a copy of which was provided to CBP. XYZ, pursuant to the design agreement, will provide ABC with design services for the garments that will bear the [*XXXXX*] trademark. ABC, CBP is advised, does not have a design staff.

XYZ will design, in Spain, the garments that ABC will have manufactured outside of the United States and will subsequently import and sell in the United States. ABC, according to the agreement, will pay XYZ directly for all design work. The foreign manufacturers of the garments ABC will sell in the United States will not incur any cost for design work and the sales prices of the merchandise from the manufacturers to ABC will not include any costs for garment design.

Paragraph 8 of the Design Agreement sets forth the "Design Fee" to be paid by ABC to XYZ. The design fee is a "per garment design charge" and is determined based on a "three calendar year average" of:

> (a) any and all actual out of pocket costs and expenses incurred by XYZ directly on account of the design process for each Seasonal Line including but not limited to such costs and expenses incurred in the purchase of sample garments, payments to independent art studios for designs or design services, the aggregate consultation fees paid by XYZ to independent contractor designers, the aggregate salaries of XYZ dedicated design staff;
>
> (b) divided by the total number of garments manufactured by XYZ, ABC and/or any other entity including distributors and licensees using the Designs created for each Seasonal Line during each such calendar year, which amount shall be calculated and adjusted annually throughout the Term.

Counsel for ABC advises that the importer will add the "per garment design charge" to the price actually paid or payable at the time of each entry.

The Financing Agreement

ABC and XYZ propose entering into a "Financing Agreement" through which XYZ will "fund the operations of [ABC's] business in the United States." The agreement, in paragraph 5, obligates ABC to pay "[i]nterest on the loans at the prime rate of interest established by Chase Bank, N.A. . . . as computed on the daily debt balances. . . ." The agreement further

obligates ABC to pay a "service charge for each month's activities, which shall be $75 or 1 percent of the aggregate face amount of accounts receivable in which XYZ obtains a security interest . . . whichever is greater."

XYZ is to receive a "continuing security interest" in collateral specifically identified in paragraph 8 of the financing agreement. The foreign manufacturers are not parties to the financing agreement and no payments, either directly or indirectly, will inure to them.

The Administrative Services Agreement

ABC and XYZ have entered into an "Administrative Services Agreement" through which XYZ will provide ABC with "supervision of and assistance with" its business operations. The business operations encompassed within the administrative services agreement, include but are not limited to: (1) Sales assistance; (2) Promotional assistance; (3) Administrative and bookkeeping assistance; (4) The establishment and maintenance of [ABC's] books and records; (5) The preparation of financial statements; (6) The rendering of invoices to ABC customers; (7) The collection of receivables; (8) The payment of "any and all expenses associated with the business and affairs . . . including the marketing, sale and promotion of products sold by" ABC; (9) The "retention of professionals for all aspects of [ABC's] business and affairs in the United States;" and (10) "[A]ll other management services required for the efficient operation of [ABC's] business."

The administrative services agreement additionally authorizes XYZ to incur obligations and borrow money. XYZ, without the prior approval of ABC, may incur "any and all obligations or liabilities on the behalf of or for [ABC's] account" provided these obligations are "in the ordinary course if (sic) business." The agreement additionally authorizes XYZ to "borrow any and all amounts as ABC may require from time to time, whether from XYZ, any institutional lender or factor or otherwise."

ABC, in return for the services of XYZ, agrees to pay a "Management Fee" "equal to five (5%) percent of [ABC's] gross sales volume anywhere throughout the world." ABC will, additionally, reimburse XYZ for the "reasonable expenses" XYZ incurs pursuant to the Administrative Services Agreement.

The Licensing Agreement

The licensing agreement proposed to be entered into between ABC, as the licensee, and XYZ, as the licensor, will grant to ABC the "non-exclusive" right to use the [*XXXXX*] trademark in connection with [ABC's] apparel products and the advertising and promotion of its apparel products. The license will only extend to [ABC's] operations in the United States and U.S. possessions, territories and military installations.

The agreement provides for the payment of royalties by ABC to XYZ on a quarterly basis. The royalties, in accordance with paragraph 11 of the Licensing Agreement, will be four percent of the "Net Sales" of the merchandise marketed under the trademark. The term "Net Sales" means "the aggregate of all sales made in the United States in a quarterly period less any and all discounts, returns, allowances, separately stated taxes, freight and insurance."

ISSUES

Are the "Design Fees" to be paid by ABC to XYZ "assists," as defined in 19 U.S.C. 1401a (h)(1)(A), the value of which must be added to the price actu-

ally paid or payable to determine the transaction value of [ABC's] imported merchandise ?

If the "Design Fees" to be paid by ABC to XYZ are assists, is the "per garment design charge" proposed by ABC, as set forth in Paragraph 8 of the Design Agreement, a reasonable method of apportioning the value of the design assist ?

Are the interest and finance service fees payable by ABC to XYZ pursuant to the "Financing Agreement" additions to the price actually paid or payable in accordance with the transaction value method of appraisement ?

Are the "Management Fees" payable by ABC to XYZ pursuant to the "Administrative Services Agreement" included in the transaction value as part of the price actually paid or payable?

Are royalties paid by ABC to XYZ for the right to use the [*XXXXX*] trademark on garments manufactured by unrelated, foreign manufacturers and sold by ABC in the United States additions to the price actually paid or payable in accordance with the transaction value method of appraisement ?

LAW AND ANALYSIS

Overview

The federal agency responsible for interpreting and applying the United States Code and the regulations of the Bureau of Customs and Border Protection, as they relate to the final appraisement of merchandise, is Customs and Border Protection. Customs and Border Protection, in accordance with its legislative mandate, fixes the final appraisement of imported merchandise in accordance with Section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979.[1] *See* 19 U.S.C. 1401a.

The preferred method of appraisement is transaction value. The transaction value of imported merchandise is:

> the price actually paid or payable for merchandise when sold for exportation to the United States, plus amounts equal to –
>
> (A) the packing costs incurred by the buyer with respect to the imported merchandise;
>
> (B) any selling commissions incurred by the buyer with respect to the imported merchandise;
>
> (C) the value, apportioned as appropriate, of any assist;
>
> (D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and
>
> (E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller. 19 U.S.C. 1401a (b)(1).

The "price actually paid or payable," as defined in the Trade Agreements Act, is:

> the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related

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[1] *See generally, What Every Member of The Trade Community Should Know About: Customs Value,* an Informed Compliance Publication of Customs and Border Protection available on the World Wide Web site of Customs and Border Protection at www.cbp.gov.

> services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller. 19 U.S.C. 1401a (b)(4)(A).

ABC and XYZ, the parties involved in the proposed Customs transaction, are, according to information presented by counsel, "related" as defined in 19 U.S.C. 1401a (g). Customs and Border Protection, again based on the factual circumstances provided by counsel, does not deem it necessary to review 19 U.S.C. 1401a (b)(2)(B) addressing transaction value between related parties to respond to this ruling request. Although ABC is the buyer in the proposed transaction, the seller is not XYZ but are, rather, unrelated, foreign manufacturers.

The Design Agreement: Assists

The transaction value method of appraisement provides that the "transaction value . . . is the price actually paid or payable . . . plus amounts equal to– . . . (C) the value, apportioned as appropriate, of any assist." 19 U.S.C. 1401a (b)(1). The term "assist" is defined in 19 U.S.C. 1401a (h). Assist means:

> any of the following if supplied directly or indirectly, and free of charge or at a reduced cost, by the buyer of imported merchandise for use in connection with the production or sale for export to the United States of the merchandise:
>
> (i) Materials, components, parts, and similar items incorporated in the imported merchandise.
>
> (ii) Tools, dies, molds, and similar items used in the production of imported merchandise.
>
> (iii) Merchandise consumed in the production of imported merchandise.
>
> (iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise. *Id*.

The "imported merchandise" in the prospective transaction is clothing. The clothing will be designed by XYZ in Spain and subsequently manufactured by unrelated foreign manufacturers pursuant to contract(s) entered into between ABC and the manufacturers. ABC, the buyer, will then import the garments into the United States.

The design work is indirectly supplied to the foreign manufacturers by ABC. It is supplied free of charge, as ABC is responsible for paying XYZ for the design work in accordance with their agreement. It will be used in connection with the production of the merchandise exported to the United States and is necessary for the production of the clothing. It is the determination of this office that the fashion "design work" is an assist, the value of which must be appropriately apportioned to properly determine the transaction value of [ABC's] entries.

Apportionment of Assist

Customs and Border Protection, having determined that the design work is an assist, must now determine whether the method of apportioning the cost of the design work proposed by ABC is consistent with the valuation

statute and Customs Regulations. CBP regulations, particularly, 19 C.F.R. 152.103 (e)(1), provide in part:

> The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer.

The importer in the instant ruling request submitted a copy of a "Design Agreement" that proposes to apportion the value of the design assist on a per garment basis. It is CBP's understanding from a review of the agreement, particularly paragraph 8, that the per garment value of the assist is determined by initially establishing the total value of the assist and then dividing the total value of the assist by the total number of garments manufactured using the design in issue. The total value of the assist is to include:

> any and all actual out of pocket costs and expenses incurred . . . directly on account of the design process . . . including but not limited to such costs and expenses incurred in the purchase of sample garments, payments to independent art studios for designs or design services, the aggregate consultation fees paid by XYZ to independent contractor designers, the aggregate salaries of XYZ dedicated design staff. *See* Design Agreement, para. 8.

The total number of garments is to include not only the garments manufactured for export to the United States using the relevant design, but is to encompass all garments manufactured by XYZ, ABC or any other entity.[2]

Subsequent to determining the total value of the assist, ABC and XYZ will determine the total number of garments manufactured by ABC, XYZ or any other entity. The value of the assist will then be divided by the number of garments produced to establish the "per garment" value of the assist.

It is the decision of this office that the "per garment design charge" apportionment proposed by ABC is a "reasonable method appropriate to the circumstances and in accordance with generally accepted accounting principles." ABC may apportion the value of the design assist as it proposes on a per garment basis.

It is the understanding of Customs and Border Protection from a review of the agreement and from counsel's submission that a link exists between the method of apportionment proposed and the merchandise imported. *See* HQ 545031 (June 30, 1993). Should it become evident in the actual implementation of the proposed method that a portion of the assist's value would not be subject to duty, the proposed method would then be found to be unreasonable and not in accordance with Customs regulations.

The Financing Agreement: Interest and Finance Servicing Fees

Appraising merchandise pursuant to the transaction value method involves determining, among other matters, the "price actually paid or payable." 19 U.S.C. 1401a (b)(1). Paragraph (b)(4)(a) of section 1401a states that

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[2] Customs and Border Protection directs the attention of ABC to HQ 544238 (Oct. 24, 1988) and HQ 545500 (Mar. 24, 1995) in which Customs stated that "[i]f the anticipated production is only partially for exportation to the United States, then the method of apportionment will depend upon documentation submitted by the importer."

the "price actually paid or payable" means the total payment made or to be made by the buyer to or for the benefit of the seller for imported merchandise, whether the payment is made directly or indirectly, with certain enumerated exclusions.

Counsel suggests in this ruling request that the "price actually paid or payable" should not include the interest payments and finance service charges to be paid by ABC, as the borrower, to XYZ, as the lender, pursuant to the proposed financing agreement. Counsel directs the attention of CBP to Treasury Decision (T.D.) 85–111, as published in 50 Fed. Reg. 27886 (1985) and as clarified by Customs in 54 Fed. Reg. 29973 (1989), which sets forth guidelines concerning whether interest payments should be included in the price actually paid or payable. ABC, through counsel, additionally notes that neither the interest charges nor the service fees will be paid directly or indirectly to the actual sellers, the unrelated, foreign manufactures.

It is the determination of this office that recourse to T.D. 85–111 is not warranted. Since ABC and XYZ do not have the relationship of buyer and seller, and neither the interest payments or service fees will inure directly or indirectly to the benefit of the unrelated, foreign seller-manufactures, a review of the guidance provided in T.D. 85–111 is not appropriate. The interest payments and finance service charges paid to a lender that is not also the seller should not be included in the price actually paid or payable to determine the transaction value of the relevant entries.

The Administrative Services Agreement: Management Fee Payments

The Administrative Services Agreement presented to Customs and Border Protection, similar to the Financing Agreement, necessitates CBP to determine whether the payment of the "Management Fee" by ABC to XYZ set forth in the agreement are sums that must be included in the transaction value as part of the "price actually paid or payable" pursuant to section 1401a (b)(1) of the Trade Agreements Act. It is the determination of this office that these payments are not so included.

Several court cases have addressed the meaning of the term "price actually paid or payable." In Generra Sportswear Co. v. United States, 905 F.2d 377 (Fed. Cir. 1990), the Court of Appeals for the Federal Circuit considered whether quota charges paid to the seller on behalf of the buyer were part of the price actually paid or payable for the imported goods. In reversing the decision of the lower court, the appellate court held that the term "total payment" is all inclusive and that "as long as the quota payment was made to the seller in exchange for merchandise sold for export to the United States, the payment properly may be included in transaction value, even if the payment represents something other than the per se value of the goods." The court also explained that it did not intend that CBP engage in extensive fact finding to determine whether separate charges, all resulting in payments to the seller in connection with the purchase of imported merchandise, were for the merchandise or something else.

In Chrysler Corporation v. United States, 17 CIT 1049 (1993), the Court of International Trade applied the Generra standard and determined that although tooling expenses incurred for the production of the merchandise were part of the price actually paid or payable for the imported merchandise, certain shortfall and special application fees which the buyer paid to

the seller were not a component of the price actually paid or payable. With regard to the latter fees, the court found that the evidence established that the fees were independent and unrelated costs assessed because the buyer failed to purchase other products from the seller and were not a component of the price of the imported engines. It has been CBP's position that, based on Generra, there is a presumption that all payments made by a buyer to a seller, or to a party related to the seller, are part of the price actually paid or payable. However, this presumption may be rebutted by evidence that clearly establishes that the payments, like those in Chrysler, are completely unrelated to the imported merchandise. See HQ 547175, dated April 21, 2000, and HQ 545663, dated July 14, 1995. In the case at hand, the Generra presumption does not apply because ABC makes the management payments to XYZ, which is neither a seller of the imported merchandise nor a company related to one of the sellers. Accordingly, the payments at issue are part of the price actually paid or payable only if the evidence establishes that they were for the imported merchandise and were for the benefit of the sellers. Based on the terms of the Agreement, the payments are not connected to the purchase of the imported merchandise but are for management services provided by XYZ to ABC in relation to its U.S. sales. There is no other evidence that the payments are made for the imported merchandise or that they benefit the sellers in any way. Accordingly, based on the facts submitted, including the Administrative Services Agreement, the payments are not included in transaction value as part of the price actually paid or payable for the imported merchandise.

We further note that the services provided by XYZ to ABC do not fall within the definition of the term "assist" as defined in 19 U.S.C. § 1401a (h). Therefore, the value of such services is not properly added to the price actually paid or payable as an assist.

The Licensing Agreement: Royalty Payments

Section 1401a (b)(1) of the value statute provides for five additions to the "price actually paid or payable" when utilizing the transaction value method of appraising imports for Customs purposes. Royalties and license fees are one of those additions. The price actually paid or payable should be increased to reflect

> any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States. 19 U.S.C. 1401a (b)(1)(D).

The Statement of Administrative Action (SAA), part of the legislative history of the TAA, reiterating the statute, sets forth that

> [a]dditions for royalties and license fees will be limited to those that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States. *Statement of Administrative Action*, H.R. Rep. No. 153, 96 Cong., 1st Sess., pt. 2, *reprinted in*, Department of the Treasury, Customs Valuation under the Trade Agreements Act of 1979 (Oct. 1981) at 48–49 (hereinafter *SAA*).

The SAA continues by noting that the dutiable status of royalty and license fees is determined on a "case-by-case" basis with royalty and license fees paid to third parties for use of copyrights and trademarks in the United

States generally considered as a "selling expense of the buyer" and not dutiable. *SAA, id.* The final determination as to dutiability being ultimately dependent on:

> (i) whether the buyer was required to pay them as a condition of sale of the imported merchandise for exportation to the United States; and (ii) to whom and under what circumstances they were paid. *SAA, id.*

The Customs Service, in an effort to further clarify the TAA and the SAA published a *General Notice* regarding the *Dutiability of "Royalty" Payments. See* 27 Cust. B. and Dec. 1 (Feb. 10, 1993) (herein after *Dutiability of "Royalty" Payments*). This issuance is commonly referred to as *Hasbro II.* Customs, in the *General Notice*, posed three questions to assist in determining whether royalty or license fees should be dutiable additions to the price actually paid or payable. The questions are: (1) Was the imported merchandise manufactured under a patent?; (2) Was the royalty involved in the production or sale of the imported merchandise ?; and (3) Could the importer buy the product without paying the fee? *See generally* HQ 546229 (May 31, 1996).

Royalty payments made because imported merchandise was manufactured under a patent or under circumstances in which the royalty was involved in the production or sale of the imported merchandise supports a conclusion that the payments are "related" to the imported merchandise. 19 U.S.C. 1401a (b)(1)(D). The importer's ability to purchase the merchandise without having to pay a royalty or license fee "goes to the heart of whether a payment is considered to be a condition of sale." *Dutiability of "Royalty" Payments, supra.* Negative answers to questions (1) and (2), and an affirmative response to question (3) supports a determination that royalty payments are not dutiable.

Although CBP has set forth the law regarding whether royalties and license fees paid to third parties should be additions to the price actually paid or payable, this office is not in a position to provide a binding decision concerning the specific transaction proposed by ABC. Customs, in a *General Notice* dated August 8, 1995, advised the trade community that

> in order for Customs to better address the underlying issues relating to the dutiability of royalty or license fees, especially whether the buyer is required to pay the royalty or license fee as a condition of sale of imported merchandise for exportation to the United States . . . a review of the royalty agreement[s] relating to the payment of the royalty or license fees in question and any purchase / supply agreement[s] pertaining to the sale of the imported merchandise for exportation to the United States is necessary. 29 Cust. B. and Dec.10 (Sept. 6, 1995).

This office is, therefore, not able to thoroughly address this issue. Absent an opportunity to review the proposed purchase agreement, CBP is not able to conclusively determine that ABC, as the buyer, is under no obligation to pay, directly or indirectly, any royalty or license fee to the foreign manufacturers as a condition of the sale.

HOLDING

The "Design Fees" to be paid by ABC to XYZ for designing the garments ABC will import into the United States are "assists" which must be appropriately apportioned and added to the price actually paid or payable to establish the transaction value of [ABC's] entries.

The "per garment design charge" proposed by ABC, as set forth in Paragraph 8 of the Design Agreement, is a reasonable method of apportioning the value of the design assist.

The interest charges and the finance service fees should not be included in the price actually paid or payable since the lender, XYZ, is not also the seller of the merchandise proposed to be imported.

The payment of the "Management Fee" by ABC to XYZ set forth in the Administrative Services Agreement is not included in transaction value as part of the price actually paid or payable. The payments also are not assists and thus are not additions to the price actually paid or payable. The holding in HQ 548316 is modified accordingly.

Customs and Border Protection is unable to determine whether royalty payments proposed to be made by ABC to XYZ for the right to use the [*XXXXX*] trademark in the United States in connection with its apparel products and their advertising and promotion should be an addition to the price actually paid or payable when appraising merchandise for Customs purposes pursuant to the transaction value method of appraisement since Customs and Border Protection was not provided a copy of a proposed purchase or supply agreement.

The regulations of Customs and Border Protection, particularly 19 CFR § 177.9(b)(1), provides that "[e]ach ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect." The application of a ruling letter by a CBP field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based.

EFFECT ON OTHER RULINGS:

HQ 548316 is modified. In accordance with 19 U.S.C. § 1625 (c)(2), this ruling will become effective sixty days after its publication in the *Customs Bulletin*.

Monika R. Brenner for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERTAIN SHORT-SLEEVED BATTING JACKET

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of a certain short-sleeved batting jacket.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182,107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain short-sleeved batting jacket. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before May 21, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark of the Trade and Commercial Regulations Branch at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, at (202) 572–8883.

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 in-

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter relating to the tariff classification of a certain short-sleeved batting jacket. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) L80081, dated October 28, 2004 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY L80081, CBP classified CBP classified a "men's woven shirt from Taiwan or China" identified as "Style 985" in subheading 6205.30.2070, HTSUS, which provides for: "Men's or boys' shirts: Of man-made fibers: Other: Other, Other: Other: Men's." Based on our recent review of NY L80081, the physical attributes and principal purpose of Style 985, and the scope of heading 6201, HTSUS, heading 6205, HTSUS, and heading 6211, HTSUS, we have determined that the classification set forth for Style 985 in NY L80081 is incorrect. Based on our review, we now believe that Style 985 is a "men's short-sleeved batting jacket" that is properly classified in subheading 6211.33.0061, HTSUS, which provides for: "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys: Of man-made fibers, Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY L80081 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967839 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially

identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: March 1, 2006

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

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY L80081
October 28, 2004
CLA–2–61:RR:NC:TA:N3:356 L80081
CATEGORY: Classification
TARIFF NO.: 6205.30.2070

MS. JENNIFER SCOTT
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.
21318 64TH Avenue
South Kent, WA 98032

RE: The tariff classification of a men's woven shirt from Taiwan or China.

DEAR MS. SCOTT:

In your letter dated October 4, 2004, you requested a tariff classification ruling on behalf of High Five Sportswear. As requested, your sample will be returned.

Style 985 is a men's pullover shirt constructed from 100 percent nylon, woven taffeta fabric. The garment features a round neck; a partial front opening with two snap closures; short, hemmed sleeves; rib knit inserts at the armholes; and a straight bottom with a drawcord and cord lock. The upper portion of the back panel is of mesh knit fabric covered with a free hanging nylon taffeta yoke.

The applicable subheading for Style 985 will be 6205.30.2070, Harmonized Tariff Schedule of the United States, (HTS), which provides for: men's or boys' shirts, of man-made fibers: other: other: other: other: men's. The rate of duty is 29.1 cents per kilogram plus 25.9 percent ad valorem.

Style 985 falls within textile category designation 640. Based upon international textile trade agreements, products of Taiwan and China are subject to visa requirements and quota restraints.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In ad-

dition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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

A copy of this ruling letter 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 this ruling, contact National Import Specialist Mary Ryan at 646–733–3271.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967839
CLA–2 RR:CR:TE 967839 BtB
CATEGORY: Classification
TARIFF NO.: 6211.33.0061

MS. JENNIFER SCOTT
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.
21318 64th Avenue South
Kent, WA 98032

Re: Classification of a men's short-sleeved batting jacket; Revocation of NY L80081

DEAR MS. SCOTT:

On October 28, 2004, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") L80081 to you on behalf of High Five Sportswear ("High Five"). In NY L80081, CBP classified a "men's woven shirt from Taiwan or China" identified as "Style 985" in subheading 6205.30.2070, Harmonized Tariff Schedule of the United States Annotated, which provides for: "Men's or boys' shirts: Of man-made fibers: Other: Other, Other: Other: Men's."

We have reviewed NY L80081 and have determined that the classification set forth for Style 985 in that ruling is incorrect. This ruling sets forth the correct classification of the style and revokes NY L80081.

FACTS:

Style 985 is identified by High Five in product catalogs and on its website as a "short sleeve batting jacket." In NY L80081, the style was described as follows:

> Style 985 is a men's pullover shirt constructed from 100 percent nylon, woven taffeta fabric. The garment features a round neck; a partial front opening with two snap closures; short, hemmed sleeves; rib knit

inserts at the armholes; and a straight bottom with a drawcord and cord lock. The upper portion of the back panel is of mesh knit fabric covered with a free hanging nylon taffeta yoke.

ISSUE:

Whether Style 985 is classifiable as a men's shirt in heading 6205, HTSUSA, as a men's jacket under heading 6201, HTSUSA, or in heading 6211, HTSUSA, as an "other" garment.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied, in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Heading 6201, HTSUSA, provides for: "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203." Heading 6205, HTSUSA, provides for: "Men's or boys' shirts." The EN to heading 6205 state, in pertinent part, that heading 6205 "**does not cover** garments having the character of wind-cheaters, wind-jackets, etc. of heading **62.01**, which generally have a tightening at the bottom. . . ."

CBP recognizes that garments may possess features of both shirts and jackets. CBP considers such garments to be "hybrid garments." *See generally* Headquarters Ruling ("HQ") 967188, dated January 28, 2005. We find the style at issue, Style 985, to be one of these garments. When the identity of a garment is ambiguous for classification purposes, reference to The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88 ("Guidelines") is appropriate.

The Guidelines were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles. The Guidelines offer the following with regard to the classification of men's or boy's shirt-jackets:

> Three-quarter length or longer garments commonly known as coats, and other garments such as . . . waist length jackets fall within this category. . . . A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. Garments in this

category have a full or partial front opening, with or without a means of closure. Coats have sleeves of any length.

* * * * * *

C) Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist . . . The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

1) Fabric weight equal to or exceeding 10 ounces per square yard. . . .

2) A full or partial lining.

3) Pockets at or below the waist.

4) Back vents or pleats. Also side vents in combination with back seams.

5) Eisenhower styling.

6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.

7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.

8) Lapels.

9) Long sleeves without cuffs.

10) Elasticized or rib-knit cuffs.

11) Drawstring, elastic or rib-knit waistband.

* * * * * *

Garments having features of both jackets and shirts will be categorized as coats if they possess at least three of the above listed features and if the result is not unreasonable. . . . Garments not possessing at least three of the listed features will be considered on an individual basis. *See* Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88 at 5–6 (Nov. 23, 1988) and the CBP Informed Compliance Publication (ICP) What Every Member of the Community Should Know About: Apparel Terminology Under the HTSUS, (Jan., 2004).

The Guidelines offer the following with regard to the classification of men's or boy's shirts, not knit:

> These categories cover male outer garments which extend from the neck and shoulder areas to or below the waist. A shirt should have a full or partial front opening, which closes left side over right side. These garments are worn over underwear or the skin and are considered conventional attire indoors and outdoors without other garments over them; they suffice the wearer except where circumstances dictate that a further degree of formality is required or where weather conditions necessitate additional protection. Shirts must have sleeves. *Id.* at 15.

Unlike the Guideline's description of men's or boy's non-knit shirts, the style will not be worn over merely underwear or the skin and is not considered

conventional attire. The style's oversized fit supports it will be worn over other garments, like a jacket. As a result, we find that Style 985 is not classified in heading 6205, HTSUSA, as a men's shirt.

Style 985 has three of the listed features of a shirt-jacket, a partial lining of mesh knit fabric, jacket-style snaps, and a drawstring at its waist. Under the Guidelines, therefore, the style should be categorized as a coat "if the result is not unreasonable." In this instance, however, we find classification of the style at issue as a coat to be unreasonable. We acknowledge that Style 985 does have certain characteristics associated with garments of heading 6201, specifically wind-cheaters or wind-jackets. First, the style has a nylon shell which is typical for windbreakers. Second, Style 985 has a drawstring tightening at its bottom. However, we emphasize that unlike garments of heading 6201, Style 985 will not be primarily worn for protection against inclement weather, as garments of heading 6201 are typically worn. *See generally* HQ 957230, dated November 29, 1994. Many of its features (e.g., short sleeves, rounded neckline with no collar) evidence that the article is not designed for protection against the elements. As a result, we find that Style 985 is not classified in heading 6201, HTSUSA, as a men's jacket.

Keeping the article's distinct features in mind, CBP has extensively researched the garment at issue and its principal use. We find High Five's reference to the style as a "batting jacket" to be accurate. More specifically, the garment is a "short sleeved batting jacket" that is worn by baseball or softball players over their uniforms during batting practice or warmup. Substantially similar batting jackets are manufactured or sold by major baseball apparel companies and are used by players from kid's to professional leagues.

Style 985 is specifically to be worn while engaged in baseball or softball and the garments' design features are specially suited to those sports. The garment is primarily worn to help a player retain body heat, thereby facilitating warmup. It also helps a player keep his or her uniform clean before game time. The style's short sleeves and knit rib shoulder insets allow arm mobility while throwing or batting. While the style may have a nylon shell similar to a windbreaker, unlike a windbreaker, the garment is not principally worn for protection against inclement weather as a jacket or jacket-type garment of heading 6201, HTSUSA.

Heading 6211, HTSUSA, provides for: "Track suits, ski-suits and swimwear; other garments. The EN to heading 6211 states, in pertinent part, that the EN to heading 6114 concerning other garments apply, *mutatis mutandis*, to the articles of heading 6211. Heading 6114 provides for: "Other garments, knitted or crocheted." The EN to this heading state, in relevant part:

> This heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of [Chapter 61].
>
> The heading includes, *inter alia*:
>
> * * * * * *
>
> (5) Special articles of apparel used for certain sports or for dancing or gymnastics (e.g., fencing clothing, jockeys' silks, ballet skirts, leotards).

CBP considers that the term "certain" limits the scope of the heading to those articles of sporting apparel which, protective or otherwise, are as a general matter, worn only while engaging in the activity for which they were

designed. *See* HQ 957469, dated November 7, 1995, on the classification of knit baseball and football compression shorts. Thus, while football pants or baseball pants might be classifiable in heading 6211, such articles as tennis or rugby shorts, which are often worn off the court or playing field, would most likely not be so classifiable. *Id*. In determining if a particular garment is classifiable as a special article of sports apparel classifiable in heading 6114 or, as in this case, heading 6211, CBP has looked to whether the garment is designed to be worn while engaged in a specific sport as illustrated by its ability to serve a particular function for that sport, such as, give additional protection to the wearer, and its recognized uniqueness to that sport. *Id*. Finally, and crucially, CBP also looks to whether the garment would be worn only while participating in the sport for which it is designed and would not ordinarily be worn at any other time.

Due to its unique construction and lack of qualities that would make Style 985 practical or desirable to wear at times other than playing baseball or softball (protection against the elements, the presence of team logos, etc.), we find that the style would not ordinarily be worn at any other time than while playing these sports. *See* HQ 967840, dated November 2, 2005, in which we made identical determinations on a short-sleeved batting jacket with a hemmed bottom. As a result, we find that Style 985 is classified in heading 6211, HTSUSA, as a special article of apparel used for baseball or softball, an "other" garment.

Note that due to its distinct styling and use, Style 985 is not a jacket or jacket-type garment of heading 6201, HTSUSA, or a shirt of heading 6205, HTSUSA, although the garment may possess features of articles of both headings. Consequently, Style 985 is not classified in subheading 6211.33.0058, HTSUSA, a subheading under heading 6211 providing for "Jackets and jacket-type garments excluded from heading 6201" or subheading 6211.33.0040, HTSUSA, a subheading under heading 6211 providing for "Shirts excluded from heading 6205."

HOLDING:

The men's batting jacket identified as Style 985 is classified in subheading 6211.33.0061, HTSUSA, which provides for: "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys: Of man-made fibers, Other." The applicable column one, general rate of duty for the merchandise under the 2006 HTSUSA is 16% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the world wide web at www.usitc.gov.

Style 985 falls within textile category 659. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of

the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY L80081, dated October 28, 2004, is hereby revoked.

MYLES B. HARMON,
Director,
Commercial Trade and Facilitation Division.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING OF PLASTIC STORAGE SPACE BAGS

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

ACTION: Notice of proposed revocation of ruling letter and revocation of treatment relating to the country of origin marking of plastic storage space bags.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182,107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter relating to the country of origin marking under 19 U.S.C. 1304. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 21, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade & Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Tariff Classification and Marking Branch, at (202) 572–8721.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter relating to the country of origin marking of plastic storage bags under 19 U.S.C. 1304 and 19 CFR part 134. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) G86772, dated March 20, 2001, (Attachment A) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY G86772, based on 19 CFR 102.19(b)(2), CBP ruled that the plastic space bags were required to be marked to indicate that their country of origin was Mexico. In reviewing 19 CFR 102.19(b)(2), we now believe that CBP misapplied the regulation in NY G86772. The plain language of 19 CFR 102.19(b)(2) indicates that the so-called "NAFTA Preference Override" applies only to country origin determinations for customs duty purposes, and it does not apply to determinations of the country of origin for the marking of imported merchandise under the requirements of 19 U.S.C. 1304 and 19 CFR Part 134.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY G86772 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper country of origin marking of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967946 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: March 7, 2006

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY G86772
March 20, 2001
MAR–2 RR:NC:SP:222:G86772
CATEGORY: MARKING

MR. ALBERTO MAYER
MAYER CUSTOMHOUSE BROKERAGE, INC.
9651 Airway Rd. Ste. A& B
San Diego, CA 92154

RE: THE COUNTRY OF ORIGIN MARKING OF PLASTIC STORAGE BAGS; ARTICLE 509

DEAR MR. MAYER:

This is in response to your undated letter on behalf of your client, New West Products, Inc., received in this office on January 31, 2001. It requested

a ruling on whether the proposed marking of space bags is an acceptable country of origin marking for imported plastic storage bags. A marked sample was submitted with your letter for review.

New West intends to export zippered, plastic storage bags to Mexico where they are fitted with a plastic valve. The bags then become space bags which are bags from which air can be removed for more compact storage. You have stated that the plastic storage bag is manufactured in the United States. The plastic valve is manufactured in Mexico. We presume that the resins used to make the plastic in these items originated in a NAFTA country and that the space bag and valve are made of wholly originating material. In addition to inserting the valve into the space bag in Mexico, you state that the bags are folded, labeled and packaged in a box with instructions for the ultimate consumer.

You request permission to print on your boxes which will reach the ultimate consumer the following marking:

> Made in the USA and assembled in Mexico Product of the USA and assembled in Mexico.

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

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.45(a)(2) of the regulations, provides that "a good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish. Section 134.1(g) of the regulations, defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

As provided in section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking

that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

The proposed marking of imported space bags, as described above, does not satisfy the marking requirements of 19 U.S.C. 1304 and 19 CFR Part 134 and is not an acceptable country of origin marking for the imported space bags.

The North American Free trade Act § 102.19 (NAFTA preference override) states . . . (b) If, under any other provision of this part, the country of origin of a good which is originating within the meaning of § 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

[T.D. 96–48, 61 FR 28957, June 6, 1996]

Accordingly the country of origin for these space bags is Mexico. They should be marked "Made in Mexico;" or "Assembled in Mexico of U.S. and Mexican Components."

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1300 Pennsylvania Ave. N.W., Washington, D.C. 20229.

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

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 Alice R. Masterson at 212–637–7090.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967946
MAR–RR:CTF:TCM 967864 RSD
CATEGORY: Marking

MR. ALBERTO MAYER
MAYER CUSTOMHOUSE BROKERAGE, INC.
9651 Airway Rd. Ste. A& B
San Diego, CA 92154

RE: The Country of Origin Marking of Plastic Storage Bags That Are Processed in Mexico; ARTICLE 509, Revocation of NY G86772

DEAR MR. MAYER:

This is in response to the letter dated October 17, 2005, from Baker & McKenzie concerning the country of origin marking requirements for space bags imported in the United States from Mexico. Specifically, counsel requests that Customs and Border Protection (CBP) modify New York Ruling G86772 (dated March 20, 2001) with respect to country of origin marking requirements for ITW Space Bags. NY G86772 was issued to New West Products, Inc. In its letter, counsel indicates that Illinois Tools Works ("ITW") acquired New West Products, Inc. and that New West Product became a wholly owned subsidiary of ITW operating under the name ITW Space Bag. We have reviewed NY G86772 and have concluded that the ruling should be revoked with respect to the country of origin marking requirements of the ITW Space Bags.

FACTS:

According to the facts that are set forth in NY G86772, ITW Space Bags exports zippered plastic storage bags into Mexico. In Mexico, the bags are fitted with plastic valves. The bags then become space bags from which air can be added or removed for more compact storage. The plastic storage bags used in producing the space bags are manufactured in the United States. The plastic valves are manufactured in Mexico. After the plastic valves are attached, the space bags are folded, labeled, and packaged in a box with instructions. They are then exported to the United States for sale to consumers.

In NY G86772, CBP ruled that the ITW space bag was a product of Mexico and that it must be marked to indicate that its country of origin is Mexico. The importer's counsel contends that CBP incorrectly applied the so-called "NAFTA Preference Override", which is set forth in 19 CFR 102.19(b). Under the analysis presented by counsel the space bags are products of the United States. Thus according to counsel the ITW Space bags are not required to be marked to indicate their country of origin.

ISSUE:

What is the country of origin marking requirements of the ITW space bags that are imported from Mexico and returned to the United States after being processed?

LAW AND ANALYSIS:

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

Section 134.1(b), CBP Regulations, defines "country of origin" as the country of manufacture, production, or growth. In order to change the country of origin, further work or material added to the article in another country must effect a substantial transformation. However, for a good of a North America Free Trade Agreement (NAFTA) country, the NAFTA Marking Rules will determine the country of origin. 19 CFR §134.1(b).

Section 134.1(j) provides that the "NAFTA Marking Rules" are the rules promulgated for the purposes of determining whether a good is a good of a NAFTA country. A "good of a NAFTA country" is an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. 19 CFR §134.1(g).

Section 134.35(b) states that a good of a NAFTA country which is to be processed in the United States in a manner that would result in the good becoming a good of the United States under the NAFTA Marking Rules is excepted from marking. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accord with this part.

Article 401 of NAFTA is incorporated in General Note 12, HTSUS, General Note 12(a). General Note 12(a)(ii) of the Harmonized Tariff Schedule of the United States (HTSUS) provides in relevant part:

> Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of Treasury (without regard to whether the goods are marked), when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "MX" in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

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

Section 102.11, CBP Regulations (19 CFR 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for the purposes of country of origin marking and determining the rate of duty and staging category applicable to an originating good as set out in Annex 302.2 of the NAFTA. Paragraph (a) of this section states that the country of origin of a good is the country in which:

(1) The good is wholly obtained or produced;
(2) The good is produced exclusively from domestic materials; or

(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

We will assume for the purposes of this ruling that the classifications that you have provided are correct. The storage bags are classified in subheading 3924.90.55, HTSUS. After processing in Mexico the space bags will also be classified in subheading 3924.90.55 HTSUS. Pursuant to 19 CFR 102.20(g), the applicable tariff shift rule for, as follows:

3922-3926 . . . . . A change to heading 3922 through 3926 from an other heading including another heading within that group.

Because the storage bags do not undergo the change of classification as result of the addition the valve in Mexico, the country of origin of the space bag cannot be determined under section 102.11(a). Since 19 CFR 102.11(a) (incorporating section 102.20), is not determinative of origin, the next step in determining the marking requirements is to apply section 102.11(b), CBP Regulations, which states in part:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country origin cannot be determined under paragraph (a) of this section:

(1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good, ...

In the instant case, the imported ITW Space bag is composed of the plastic storage bag, which is produced in the United States and a plastic valve of Mexican origin. When determining the essential character of a good under section 102.11, CBP Regulations, section 102.18(b)(1), provides that, for purposes of applying section 102.11, only domestic and foreign materials (including self-produced materials) that are classified in a tariff provision from which a change in tariff classification is not allowed in the rule for the good set out in section 102.20 shall be taken into consideration in determining the parts or materials that determine the essential character of a good. See HQ 560038 dated February 7, 1997.

The only material in the space bag that does not undergo the required tariff shift is the U.S. origin plastic storage bag because it is classified in heading 3924, HTSUS, and the space bag processed in Mexico is also classified in heading 3924, HTSUS. Accordingly, under 19 CFR 102.18(b)(1)(iii), the plastic storage bag imparts the essential character to the finished ITW space bag. Therefore, the country of origin of the ITW space bag for marking purposes will be the country of origin of the storage bag, which in this case is the United States.

However, in determining the country of origin marking requirements for the imported space bags, NY G86772 applied 19 CFR 102.19(b), the so called "NAFTA preference override" and concluded that the country of origin for the completed ITW Space Bags was Mexico. Thus, the ruling held that the space bags must be marked "Made in Mexico;" or "Assembled in Mexico of U.S. and Mexican Components." In reviewing 19 CFR 102.19(b), we believe that the application of the NAFTA preference override used in NY G86772 to

determine the country of origin marking requirements of the space bags was not correct. Specifically, 19 CFR 102.19(b) states:

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

The plain wording of 19 CFR 102.19(b) indicates that it is limited only to determining the country of origin of an imported product for duty purposes. There is no indication in 19 CFR 102.19(b) or elsewhere that specifies that the "NAFTA Preference Override" should be used to determine the country of origin for marking purposes. Thus, we find that NY G86772 was incorrect in using section 102.19(b) to determine that the space bags should be marked to indicate that they were of Mexican origin.

As already explained, based on 19 CFR 102.11(b), the country of origin of Space Bags is the United States, and thus they are exempted from the country of origin marking requirements of 19 U.S.C. 1304 and 19 CFR 134. Although CBP has determined in this ruling that the finished Space Bags are articles of U.S. origin and are not subject to the country of origin marking requirements of 19 U.S.C. 1304, whether they may be marked "Made in the USA" is an issue under the authority of the Federal Trade Commission (FTC). We suggest that you contact the FTC Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20508 on the propriety of markings indicating that articles are made in the U.S.

HOLDING:

Based on 19 CFR 102.11(b), after being processed in the Mexico, the country of origin of the ITW space bags for country of origin marking purposes is the United States. Therefore, they are exempt from the country of origin marking requirements of 19 U.S.C. 1304 and 19 CFR Part 134.

EFFECT ON OTHER RULINGS:

NY G86772 dated March 20, 2001, is hereby revoked.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.