

U.S. Customs and Border Protection

CBP Dec. 11-11

AMENDMENTS TO GUIDELINES FOR THE ASSESSMENT AND MITIGATION OF PENALTIES AGAINST ARRIVING VESSEL, AIR AND RAIL CARRIERS FOR FAILURE TO COMPLY WITH THE ADVANCE ELECTRONIC CARGO INFORMATION REQUIREMENTS; GUIDELINES FOR THE ASSESSMENT AND CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES AGAINST CARRIERS, NVOCCS, SLOT CHARTERERS AND OTHER PARTIES ELECTING TO TRANSMIT THE ADVANCE ELECTRONIC CARGO INFORMATION FOR FAILURE TO COMPLY WITH THE ADVANCE ELECTRONIC CARGO INFORMATION REQUIREMENTS

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

ACTION: General notice.

SUMMARY: This general notice amends a document published in the Customs Bulletin on July 6, 2005. That document set forth guidelines for the assessment of penalties, and mitigation thereof pursuant to Title 19, United States Code (U.S.C.), section 1618 (19 U.S.C. 1618), incurred by arriving vessel, air and rail carriers for failing to provide the required advance electronic cargo information to CBP within the time period and manner prescribed by the regulations or for providing inaccurate or invalid cargo information. It also published bond cancellation standards, pursuant to 19 U.S.C. 1623, to be applied to claims for liquidated damages incurred by carriers, non-vessel operating common carriers, slot charterers, and other authorized parties who elect to transmit advance electronic cargo information to CBP through the CBP-approved electronic data interchange systems, but who fail to comply with the obligation to provide advance electronic cargo information to CBP within the time period and manner prescribed by the regulations, or for providing inaccurate or invalid cargo information.

The amendments set forth in this document clarify that mitigation of penalties is available to any Customs-Trade Partnership Against

Terrorism (C-TPAT) member that has been validated and is in good standing with the C-TPAT program, and not just to carriers that are certified C-TPAT members. This notice also further clarifies the mitigation amounts available to C-TPAT members. This notice clarifies what constitutes a subsequent violation, both for mitigation purposes and for determining whether a penalty may be assessed as a “subsequent violation” under 19 U.S.C. 1436(b). In addition, because all carriers are now required to be operational on AMS at all ports and advance electronic cargo information is required at all ports, references have been removed to ocean carriers that are not currently operational on AMS, carriers that are not operational on AMS at all ports, and ports where advance electronic cargo information is not required. The guidelines have also been amended to clarify that the guidelines applicable to the assessment of liquidated damages for late, inaccurate or invalid advance electronic information submissions also apply to violations of section 1436(b) for failing to file the required electronic information. The guidelines also have been amended to clarify that the failure to timely transmit accurate and valid electronic cargo information by *any* authorized electronic transmitter may result in the delay or denial of the permit to unlade. Finally, this notice amends the guidelines relating to the assessment and cancellation of liquidated damages claims for failure to comply with the advance electronic cargo information requirements so that they are consistent with the amendments that CBP made in the Importer Security Filing and Additional Carrier Requirements Interim Final Rule. Specifically, these amendments pertain to liquidated damages amounts for violations of the advance cargo information requirements under 19 CFR 4.7 and 4.7a to be \$5,000 for each violation of the advance cargo information requirements, to a maximum of \$100,000 per conveyance arrival.

EFFECTIVE DATE: These guidelines will take effect **upon publication**.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 6, 2005, the Bureau of Customs and Border Protection (CBP) published CBP Dec. 05-23 in the Customs Bulletin. CBP Dec. 05-23 set forth guidelines for the assessment of penalties, and the mitigation thereof pursuant to Title 19, United States Code (U.S.C.),

section 1618 (19 U.S.C. 1618), incurred by arriving vessel, air and rail carriers for failing to provide the required advance electronic cargo information to CBP within the time period and manner prescribed by the regulations or for providing inaccurate or invalid cargo information. CBP Dec. 05–23 also published bond cancellation standards, pursuant to 19 U.S.C. 1623, to be applied to claims for liquidated damages incurred by non-vessel operating common carriers, slot charterers and other authorized parties who elect to transmit advance electronic cargo information to CBP through the CBP-approved electronic data interchange systems, but who fail to comply with the obligation to provide advance electronic cargo information to CBP within the time period and manner prescribed by the regulations or for providing inaccurate or invalid cargo information. For a complete background discussion concerning the guidelines for the assessment and mitigation of penalties, *see* CBP Dec. 05–23.

This notice clarifies the guidelines published in CBP Dec. 05–23 by making corrections and clarifications, including amendments to the sections covering the assessment of liquidated damages claims (section II.C.), mitigation of penalties and cancellation of liquidated damages claims (section II.E.), and mitigating and aggravating factors (section II.F.). This document also amends the guidelines relating to the assessment and cancellation of liquidated damages claims for failure to comply with the advance electronic cargo information requirements so that they are consistent with the amendments that CBP made in the Importer Security Filing and Additional Carrier Requirements Interim Final Rule published in the Federal Register (73 FR 71730) on November 25, 2008. All of the amendments in this notice are explained in greater detail immediately below.

The guidelines applicable to the assessment of liquidated damages for late, inaccurate or invalid advance electronic information submissions in Section II.C. have been amended to clarify that they also apply to violations for failing to file the information as well.

CBP Dec. 05–23 inadvertently limited the entities that may be eligible to mitigation of liquidated damages assessed against C-TPAT members to include only carriers. In fact, NVOCCs, slot charterers, and other authorized electronic transmitters that have been validated and are in good standing with the C-TPAT program may also be entitled to the same mitigation of liquidated damages. Therefore, in sections II.E.1., II.E.2., and II.F.1.c. of the guidelines, applicable references to “carriers,” when used in the context of liquidated damages assessed against C-TPAT members, have been revised to clarify that all C-TPAT members that have been validated and are in good standing are encompassed, regardless of whether they are carriers.

This document also clarifies the mitigation amounts available to C-TPAT members. Specifically, sections II.E.1. and II.E.2. are amended to clarify that carriers, NVOCCs, slot charterers, and other authorized electronic transmitters may receive additional mitigation to an amount not more than 50% of the normal mitigation amount. In section II.E.1., the example provided for C-TPAT members is also revised by adding at the end of the sentence the phrase, “but may be mitigated to a smaller mitigated penalty (e.g. \$400, \$300, etc.).”

In section II.E.2., the example provided for C-TPAT members inadvertently related to first time violators covered under section II.E.1. Therefore, in section II.E.2., the example is replaced with a new example that addresses subsequent violations (not first time violators). The example is also revised by adding at the end of the sentence the phrase “but may be mitigated to a smaller mitigated penalty (e.g. \$1,500, \$1,250, \$1,000 etc.).”

CBP inadvertently omitted a definition of what constitutes a subsequent violation. Therefore, a definition of “subsequent violation,” with examples, has been added to section II.E.2.

All carriers are now required to be operational on AMS at all ports and advance electronic cargo information is required at all ports. Accordingly, references to ocean carriers that are not currently operational on AMS, carriers that are not operational on AMS at all ports, and ports where the advance electronic cargo information are required are removed.

The guidelines in Section II.A.1. have been amended to clarify that the failure to timely transmit accurate and valid electronic cargo information by *any* authorized electronic transmitter may result in the delay or denial of the permit to unlade.

Finally, this notice amends the guidelines relating to the assessment and cancellation of liquidated damages claims for failure to comply with the advance electronic cargo information requirements so that they are consistent with the amendments that CBP made in the Importer Security Filing and Additional Carrier Requirements Interim Final Rule. Specifically, CBP amended the liquidated damages amounts for violations of the advance cargo information requirements under 19 CFR 4.7 and 4.7a to be \$5,000 for each violation of the advance cargo information requirements, to a maximum of \$100,000 per conveyance arrival.

The above amendments have been incorporated into the guidelines below, which are republished, as amended.

Dated: May 4, 2011

ALAN D. BERSIN
Commissioner

Guidelines for the Assessment and Mitigation of Penalties Against Arriving Vessel, Air and Rail Carriers for Failure to Comply with the Advance Electronic Cargo Information Requirements; Guidelines for the Assessment and Cancellation of Claims for liquidated Damages Against Carriers, NVOCCs, Slot Charterers and Other Parties Electing to Transmit the Advance Electronic Cargo Information for Failure to Comply with the Advance Electronic Cargo Information Requirements

I. In General

In addition to the enforcement actions, penalties and liquidated damages that may be taken and assessed as provided for below, the failure of an arriving carrier (vessel, air or rail) to be automated in the Automated Manifest System (“AMS”) at all ports of entry in the United States, or the failure of an arriving carrier (vessel, air or rail) or of any authorized electronic transmitter to provide the required advance electronic cargo information in the time period and manner prescribed by the U.S. Customs and Border Protection (CBP) regulations may result in the delay or denial of a vessel carrier’s preliminary entry-permit/special license to unlade, an air carrier’s landing rights, a train carrier’s permission to proceed, and/or the assessment of any other applicable statutory penalty. CBP may also take other enforcement action as necessary, including withholding the release or transfer of the cargo until CBP receives the cargo declaration information and has had the opportunity to review the documentation and conduct any necessary examination.

Where the party electronically presenting to CBP the cargo information required in sections 4.7a(c), 122.48a(d) and 123.91(d) of the CBP regulations (19 CFR 4.7a(c), 122.48a(d) and 123.91(d)) receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present such information on the basis of what the party reasonably believes to be true.

II. Failure to be Automated in the AMS System; Untimely Filing of Electronic Cargo Information; Filing of Inaccurate Electronic Cargo Information

A. Denial of Unlading/Landing Rights/Permission to Proceed

1. Vessel Cargo.

All arriving vessel carriers must be automated on the Vessel AMS at each port of entry in the United States on the ocean carrier's itinerary. The failure of the arriving vessel carrier to be automated in the Vessel AMS may result in the denial of the carrier's preliminary entry permit/special license to unlade, and a term permit or special license already issued will not be applicable to any inbound vessel carrier.

The failure to timely transmit the cargo information or the failure to transmit accurate or valid electronic cargo information by the arriving vessel carrier, slot charterers, non-vessel operating common carriers (NVOCCs), or other authorized electronic transmitters may result in the delay or the denial of the permit to unlade. As an example, presenting the cargo information 10 hours before the cargo is laden aboard the vessel at the foreign port, or filing incomplete information, may result in the delay or the denial of the permit to unlade. Such actions violate 19 CFR 4.7(b)(2), which provides that CBP must receive the electronic cargo information 24 hours before the cargo is laden aboard the vessel at the foreign port. In any case, CBP will not issue the permit to unlade before it has received the cargo declaration information pursuant to the regulations. Also, a term permit or special license already issued will not be applicable to any inbound vessel carrier for which CBP has not received the advance electronic cargo information in the time period and manner required.

2. Air Cargo.

For any cargo that arrives in the United States by air at a port, CBP must receive the required advance electronic cargo information, as provided for in section 122.48a of the CBP regulations (19 CFR 122.48a). The failure to timely transmit the cargo information or the failure to transmit accurate or valid electronic cargo information may result in the delay or the denial of the carrier's permit/special license to unlade or in the denial of its landing rights. As an example, presenting the cargo information for cargo from a foreign area, other than a nearby foreign area, 2 hours prior to the arrival of the aircraft in the United States, or filing incomplete information, may result in the delay or the denial of the permit to unlade. Such actions violate 19 CFR 122.48a(b), which provides, for aircraft departing from foreign areas other than nearby foreign areas, that CBP must receive

the electronic cargo information no later than 4 hours prior to the arrival of the aircraft in the United States. In any case, the failure of the arriving air carrier or another authorized party to electronically transmit the cargo information may result in the denial of the carrier's permit/special license to unlade, and a term permit or special license already issued will not be applicable to the inbound flight.. Also, a term permit or special license already issued will not be applicable to any inbound flight for which CBP has not received the advance electronic cargo information in the time period and manner required.

3. Rail Cargo.

For any cargo that arrives in the United States by rail, CBP must receive the required advance electronic cargo information, as provided for in section 123.91 of the CBP regulations (19 CFR 123.91). The failure to timely transmit the cargo information or the failure to transmit accurate or valid electronic cargo information may result in the delay or the denial of the carrier's permit/special license to unlade (including the delay or denial of the carrier's permit to proceed). As an example, presenting the cargo information 1 hour prior to the cargo reaching the first port of arrival in the U.S., or filing incomplete information, may result in the delay of the denial of the permit to unlade. These actions violate 19 CFR 123.91(a), which provides that CBP must receive the electronic cargo information no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. In any case, the failure of the arriving rail carrier to electronically transmit the cargo information may result in the denial of the carrier's permit/special license to unlade (including the delay or denial of the carrier's permit to proceed), and a term permit or special license already issued will not be applicable to the inbound rail carrier. Also, a term permit or special license already issued will not be applicable to any inbound rail carrier for which CBP has not received the advance electronic cargo information in the time period and manner required.

B. Penalty Assessment Against Arriving Carriers

When a carrier (vessel, air or rail) arrives at a port of entry, Port Directors may assess a civil monetary penalty, under 19 U.S.C. 1436, for violation of sections 4.7, 4.7a, 122.48a or 123.91 of the CBP regulations (19 CFR 4.7, 4.7a, 122.48a or 123.91), against the master, pilot or person in charge of any arriving carrier (vessel, air or rail) which is not automated in the AMS or who fails to electronically transmit the advance cargo information. A penalty of \$5,000 may be

assessed against the master of the vessel, pilot of the airplane, or person in charge of the train in care of the carrier. A \$10,000 penalty (also under 19 U.S.C. 1436) may be assessed against the *same* master of the vessel, pilot of the airplane, or person in charge of the train in care of the carrier for any subsequent violation. In addition to a penalty pursuant to 19 U.S.C. 1436, CBP may take any other necessary enforcement action, including but not limited to, denying the permit/special license to unlade (including the delay or denial of a carrier's permission to proceed), denying the term permit or special license to unlade, denying an air carrier's landing rights, denying a vessel's preliminary entry-permit/special license to unlade, and/or assessing any other applicable statutory penalty.

Also, when a carrier (vessel, air or rail) arrives at a port of entry, Port Directors may assess a civil monetary penalty, under 19 U.S.C. 1436, for violation of sections 4.7, 4.7a, 122.48a or 123.91 of the CBP regulations (19 CFR 4.7, 4.7a, 122.48a or 123.91), against the master, pilot or person in charge of any arriving carrier (vessel, air or rail) who untimely files electronic cargo information, or who files inaccurate or invalid electronic cargo information. A penalty of \$5,000 may be assessed against the master of the vessel, pilot of the airplane, or person in charge of the train in care of the carrier. A \$10,000 penalty (pursuant to 19 U.S.C. 1436) may be assessed against the *same* master of the vessel, pilot of the airplane, or person in charge of the train in care of the carrier for any subsequent violation. In addition to a penalty pursuant to 19 U.S.C. 1436, CBP may take any other necessary enforcement action, including but not limited to, denying the permit/special license to unlade (including the delay or denial of a carrier's permission to proceed), denying the term permit or special license to unlade, denying an air carrier's landing rights, denying a vessel's preliminary entry-permit/special license to unlade, and/or assessing any other applicable statutory penalty.

C. Assessment of Liquidated Damages Claims Against Carriers, NVOCCs, Slot Charterers, and Authorized Electronic Transmitters

When a vessel carrier or an air carrier arrives at a port of entry, Port Directors may assess, in addition to any other applicable statutory penalty, a claim for liquidated damages against any carrier, NVOCC, slot charterer or other authorized electronic transmitter who elects to transmit cargo information but who fails to transmit the advance electronic cargo information to the CBP-approved electronic data interchange system, transmits the electronic cargo information untimely, or transmits inaccurate or invalid electronic cargo information. Specifically, Port Directors may assess a claim for liquidated damages in the amount of \$5,000 for each violation of the advance

cargo information requirements in sections 4.7, 4.7a, or 122.48a of the CBP regulations (19 CFR 4.7, 4.7a or 122.48a), to a maximum of \$100,000 per conveyance arrival under 19 CFR 113.64(c) or 19 CFR 113.62(k)(2). A claim for liquidated damages in the amount of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival, may be assessed for subsequent violations related to subsequent arrivals.

D. Other Considerations Regarding the Assessment of Penalties

For each departure to the United States where multiple violations for untimely filing of advance cargo information consistent with the above occur, a single penalty may be assessed against the master, pilot or person in charge of the train under 19 U.S.C. 1436.

In cases where inaccurate or invalid electronic cargo information is transmitted for multiple shipments on the same arrival, a single penalty may be assessed against the master, pilot or person in charge of the train under 19 U.S.C. 1436.

E. Mitigation of Penalties / Cancellation of Liquidated Damages Claims

Under 19 U.S.C. 1618 CBP has authority to mitigate penalties and liquidated damages. Exercise of such mitigation authority is within the sole discretion of CBP. The following provisions set forth guidelines that CBP will use in making mitigation decisions, but they do not establish any rights enforceable by carriers or other parties.

1. First Violation

If an arriving carrier (vessel, air or rail) incurs a penalty for failing to be automated in the AMS or to electronically transmit the required cargo information, for untimely filing electronic cargo information, or for filing inaccurate or invalid electronic cargo information, CBP, at its sole discretion, may mitigate the penalty to an amount between \$1,000 and \$3,500, if CBP determines that law enforcement goals were not compromised by the violation. A carrier that has been validated and is in good standing with the C-TPAT program may receive, at CBP's sole discretion, additional mitigation to an amount not more than 50% of the normal mitigation amount. For example, if a penalty is normally mitigated to \$1,000 (the lowest mitigation amount for first violations by non-C-TPAT members), a penalty assessed against a validated C-TPAT member generally will be mitigated to an amount of no more than \$500, but may be mitigated to a smaller mitigated penalty (e.g. \$400, \$300, etc.).

If a carrier, NVOCC, slot charterer or other authorized electronic transmitter incurs a liquidated damages claim for failing to transmit the required cargo information, untimely filing cargo information, or for filing inaccurate or invalid electronic cargo information, the liquidated damages claim may be cancelled, at CBP's sole discretion, upon payment of an amount between \$1,000 and \$3,500, if CBP determines that law enforcement goals were not compromised by the violation. A carrier, NVOCC, slot charterer, or other authorized electronic transmitter that has been validated and is in good standing with the C-TPAT program may receive additional mitigation generally to an amount not more than 50% of the normal mitigation amount. For example, if a liquidated damages claim is normally mitigated to \$1,000 (the lowest mitigation amount for first violations by non-C-TPAT members), a liquidated claim assessed against a validated C-TPAT member may be mitigated to an amount of no more than \$500, but may be mitigated to a smaller mitigated penalty (e.g. \$400, \$300, etc.).

2. *Subsequent Violations*

a. *Definitions and Examples*

A violation of 19 U.S.C. 1436 shall be considered a subsequent violation only if the violation involves a violation of the same regulation (19 CFR 4.7 and 4.7a, 122.48a, or 123.91), and involves the same type of violation within each regulation, and only if the subsequent violation was committed more than 30 days after the issuance of a notice of penalty (CBP Form 5955A) for the first violation, which is not remitted in full. The four types of violations are (1) failing to be automated in AMS; (2) failing to electronically transmit the required cargo information; (3) untimely filing the required cargo information; and (4) filing inaccurate or invalid cargo information. A violation shall be considered a subsequent violation without regard to the port of arrival; however, the commercial vessel, aircraft or train involved in the subsequent violations must have had the *same* master, pilot, or person in charge.

Example 1. An arriving carrier untimely transmits the electronic cargo information on November 1, 2005. On November 15, 2005, CBP issues the notice of penalty against the air carrier. On December 20, 2005, and again on December 21, 2005, the same arriving carrier untimely transmits the electronic cargo information. The December 20, 2005 and December 21, 2005 violations will be considered subsequent violations. However, if the later untimely transmissions occur on December 10, 2005, and December 21, 2005, the December 10,

2005 violation will not be considered a subsequent violation but the untimely transmission of December 21, 2005 will be considered a subsequent violation.

Example 2. An arriving carrier untimely transmits the electronic cargo information, and, more than thirty days after the issuance of a penalty notice for this violation, transmits inaccurate or invalid cargo information for a subsequent arriving flight. The second violation is *not* considered a subsequent violation because the violations are not of the same type (i.e., the first violation involves an untimely transmission while the second violation involves an inaccurate or invalid transmission).

b. *Mitigation and Cancellation Amounts*

If the arriving carrier (vessel, air or rail) incurs a subsequent penalty for untimely filing cargo information or for filing inaccurate or invalid electronic cargo information, the penalty may be mitigated to an amount between \$3,500 and \$5,000, if CBP determines that law enforcement goals were not compromised by the violation.

If a carrier, NVOCC, slot charterer or other authorized electronic transmitter incurs a claim for liquidated damages for a subsequent violation which is related to a subsequent arrival for untimely filing cargo information, or for filing inaccurate or invalid electronic cargo information, the claim for liquidated damages may be cancelled upon payment of an amount not less than \$3,500.

If a carrier, NVOCC, slot charterer, or other authorized electronic transmitter which has been validated and is in good standing with the C-TPAT program untimely files electronic cargo information or files inaccurate or invalid cargo information, the C-TPAT member may receive additional mitigation to an amount not more than 50% of the normal mitigation amount. For example, if the penalty or liquidated damages claim is normally mitigated to \$3,500 (the lowest mitigation amount for subsequent violations by non-C-TPAT members), a penalty or liquidated damages claim assessed against a C-TPAT member should be mitigated to no more than \$1,750, but may be mitigated to a smaller mitigated penalty (e.g. \$1,500, \$1,250, \$1,000, etc.).

However, CBP will grant no mitigation for subsequent violations for failing to be automated in the AMS or for failing to electronically transmit the required cargo information, regardless of whether the violator is a C-TPAT member.

3. *Information to Transmitter from Another Party*

Where the party electronically presenting to CBP the cargo information required by CBP regulations receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present such information on the basis of what the party reasonably believes to be true.

F. *Mitigating and Aggravating Factors*

1. *Mitigating Factors:*

- a. Inexperienced in transmitting advance electronic cargo information.
- b. A general good performance and low error rate in handling of cargo.
- c. A carrier, NVOCC, slot charterer, or other authorized electronic transmitter that has been validated and is in good standing with the C-TPAT program may receive additional mitigation to an amount not more than 50% of the normal mitigation amount.
- d. Demonstrated remedial action has been taken to prevent future violations.

2. *Aggravating factors:*

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

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE NAFTA ELIGIBILITY OF REFINED
SUGAR**

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

ACTION: Notice of proposed modification of two ruling letters and proposed revocation of treatment relating to the NAFTA eligibility of refined sugar.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify two ruling letters relating to the NAFTA eligibility of sugar under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before June 24, 2011.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. - 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Karen Greene, Valuation and Special Programs Branch: (202) 325–0041.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP proposes to modify two ruling letters pertaining to the NAFTA eligibility of sugar. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N025726, dated April 30, 2008 and New York Ruling Letter (NY) N065187, dated July 16, 2009, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N065187 and NY N025726, set forth respectively as Attachments A and B to this document, CBP determined that certain Mexican raw sugar refined in Canada was considered “wholly obtained or produced” entirely in Mexico and therefore, would be a NAFTA originating good and eligible for preferential tariff treatment. We have reviewed the rulings and determined that the NAFTA eligibility issue

is not fully explained. It is now our position that the subject refined sugar would be considered a NAFTA originating good because it is wholly obtained or produced entirely in the territory of Canada and Mexico as set forth in GN 12(b)(i).

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N065187 and NY N025726 and modify any other ruling not specifically identified, in order to reflect the proper interpretation of NAFTA eligibility according to the analysis contained in proposed HQ H131644, set forth as Attachment C and HQ H131645, set forth as attachment D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 28, 2011

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY N065187

July 16, 2009

CLA-2-17:OT:RR:NC:232

CATEGORY: Classification

TARIFF NO.: 1701.99.1090; 1701.99.5090

MS. NINFA DIMORA-MINES
28 PRINCESS STREET
P.O. BOX 1197 FORT ERIE,
ONTARIO L2A 5Y2 CANADA

RE: The tariff classification and statute under the North American Free Trade Agreement (NAFTA), of refined sugar from Mexico; Article 509

DEAR MS. DIMORA-MINES:

In your letter dated May 27, 2009, on behalf of your client, Lantic, Inc., you requested a classification ruling.

The subject merchandise is described as cane sugar that will be refined from Mexican raw sugar. The Mexican raw sugar will be processed at sugar refining facilities located in Canada. You have stated that prior to refining, the facilities would be purged of all non-Mexican sugars and syrups. It is also stated that the Mexican sugar will be totally segregated and will not be commingled or stored with other non-Mexican sugar. The polarity of the sugar is said to be 99.9 degrees and will be packaged in 50 pounds bags and/or 1 metric ton tote bags.

The applicable subheading for the Refined Sugar will be 1701.99.1090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cane or beet sugar and chemically pure sucrose, in solid form: Other... Other. The general rate of duty will be 3.6606 cents per kilogram less 0.020668 cents per kilogram for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 3.143854 cents per kilogram. If not described in additional U.S. note 5 to chapter 17 and not entered pursuant to its provisions, the applicable subheading will be 1701.99.5090, HTS. The duty rate will be 35.74 cents per kilogram.

The refined sugar, being wholly obtained or produced entirely in the territory of Mexico, will meet the requirements of HTSUS General note 12(b)(i), and will therefore be entitled to a free rate of duty, when classified under subheadings 1701.99.1090 and 1701.99.5090, HTS, under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at (646) 733-3031.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

NY N025726

April 30, 2008

CLA-2-17:OT:RR:E:NC:232

CATEGORY: Classification

TARIFF NO.: 1701.99.1090; 1701.99.5090

MR. DANIEL E. WALTZ
PATTON BOGGS ATTORNEYS AT LAW
2550 M STREET, NW
WASHINGTON, DC 20037-1350

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of refined sugar from Mexico; Article 509

DEAR MR. WALTZ:

In your letter dated April 4, 2008, on behalf of your client, Redpath Sugar Ltd., of Toronto Canada, you requested a ruling on the status of refined sugar from Mexico under the NAFTA.

The subject merchandise is described as refined cane sugar that will be produced from Mexican raw sugar. Mexican raw sugar is processed at the sugar refining plant located in Canada. It is stated that before any of the refinery process commences, most of the Mexican origin raw sugar is segregated from the other (non-Mexican origin) sugars in the shed. The sugar is processed separately and any residual sugar liquor remaining in the process from the previous non-Mexican raw sugar that cannot be drained will be purged from the process. Syrups in the remelt plant will be emptied into trucks and will not be mixed in or used as an input to the Mexican sugar production run. As a result, the final product will be the refined cane sugar that will be stored at the refining plant until it is imported into the United States. The applicable subheading for the refined cane sugar will be 1701.99.1090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cane or beet sugar and chemically pure sucrose, in solid form: Other: Other... Other. The general rate of duty will be 3.6606 cents per kilogram less 0.020668 cents per kilogram for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 3.143854 cents per kilogram. If not described in additional U.S. note 5 to chapter 17 and not entered pursuant to its provisions, the applicable subheading will be 1701.99.5090, HTS. The duty rate will be 35.74 cents per kilogram.

The refined sugar, being wholly obtained or produced entirely in the territory of Mexico, will meet the requirements of HTSUS General note 12(b)(i), and will therefore be entitled to a free rate of duty, when classified under subheadings 1701.99.1090 and 1701.99.5090, HTS, under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

Your inquiry also requests a ruling on the country of origin marking requirements for an imported article which is claimed to be a good of a NAFTA country, which is later processed in a NAFTA country prior to being imported in the United States. A marked sample was not submitted with your letter for review. 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 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 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

(Emphasis added). Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. 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, 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. You state that the imported refined sugar is produced from raw sugar originating in a NAFTA country, “Mexico” prior to being imported into the U.S. Since, “Mexico” is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported sugar blend is a good of a NAFTA country, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes. Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the refining process does not create a new article with a new name, character or use. In September 1989, Headquarters Ruling Letter, (HQ) 082033 supports the question of whether the refining of sugar is a substantial transformation. The qualities sought after in sugar (its sweetness and nutritional value) are still present after the refining process. To paraphrase the court in *National Juice Products Assn. v. the United States*, 10 CIT 49, 628 F. Supp. 978 (1986), while refining may make raw sugar more suitable for retail sale, the processing of the cane into raw sugar imparted the essential character of the sugar. We find for marking purposes, the imported refined sugar is a good of a NAFTA country prior to being further processed in Canada. Since the raw sugar is produced in Mexico, it satisfies the requirements of Section 102.11(b)(1).

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at 646-733-3031.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

HQ H131644

OT:RR:CTF:VS H131644 KSG

MS. NINFA DIMORA-MINES
PRINCESS STREET
P.O. BOX 1197
FORT ERIE, ONTARIO
CANADA
L2A 5Y2

Re: Modification of New York ruling N065187; NAFTA eligibility; sugar

DEAR MS. NINFA DIMORA-MINES:

This is in response to your letter dated May 27, 2009, which CBP addressed in New York Ruling N065187, dated July 16, 2009, dealing with imported refined sugar.

FACTS:

Mexican-origin raw sugar will be processed at sugar refining facilities in Canada to produce refined cane sugar. The polarity of the sugar is 99.9 degrees and will be packaged in 50 lb. bags and/or 1 metric ton tote bags.

CBP held in NY Ruling N065187, that the cane sugar would be an “originating” good under the North American Free Trade Agreement (“NAFTA”) because it was wholly obtained or produced in Mexico.

ISSUE:

Is the imported refined cane sugar eligible for preferential tariff preference under the North American Free Trade Agreement (“NAFTA”)?

LAW AND ANALYSIS:

Pursuant to General Note (“GN”) 12, HTSUS, for an article to be eligible for NAFTA preference, two criteria must be satisfied. First, the article in question must be “originating” under the terms of GN 12 and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR 102.20.

With regard to the first criteria, GN 12(b) provides, in pertinent part, as follows:

For purposes of this note, goods imported into the customs territory of the U.S. are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as goods originating in the territory of a NAFTA party only if: (i) they are goods wholly obtained or produced in the territory of Canada, Mexico and/or the U.S.; or (ii) they have been transformed in the territory of Canada, Mexico, and/or the U.S. so that each of the non-originating material used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s), and (t) of this note or the rules set forth therein, or the goods otherwise satisfy the applicable requirements of subdivisions (r), (s), and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or they are goods produced entirely in the territory of Canada, Mexico and/or the U.S. exclusively from originating materials.

As stated in the facts above, the refined sugar is not wholly produced or obtained in Mexico. However, it would be wholly obtained or produced entirely in the territory of Canada and Mexico as set forth in GN 12(b)(i), and therefore, an originating good under GN 12.

Section 102.11, Customs 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 quota category. 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.

In this case, the sugar is not wholly obtained or produced exclusively from domestic materials. Therefore, we must proceed to 10 CFR 102.11(a)(3).

We assume for the purposes of this ruling that the imported refined sugar is classified in subheading 1701.99, HTSUS and the raw sugar is classified in subheading 1701.11, HTSUS.

The tariff shift rule set forth in 19 CFR 102.20 for goods of headings 1701–1702 is as follows:

A change to 1701 through 1702 from any other chapter.

Clearly, no chapter change takes place in this case. Therefore, we proceed to 19 CFR 102.11(b), which states that the country of origin of the single material that imparts the essential character to the good would determine the country of origin of the good. Pursuant to 19 CFR 102.18(b)(iii), if there is only one material that does not make the tariff shift, that single material would represent the essential character to the good under 19 CFR 102.11. In this case, the Mexican raw sugar would impart the essential character to the good. Therefore, the country of origin of the good would be considered Mexico.

The imported refined sugar would be an originating good for the purposes of the NAFTA and would be considered a product of Mexico for purposes of country of origin marking, rate of duty, and quota purposes.

HOLDING:

The imported refined sugar will be considered an originating good under the NAFTA because it is wholly obtained or produced entirely in the NAFTA territories. The country of origin of the imported refined sugar would be Mexico for purposes of country of origin marking, rate of duty, and for quota purposes.

EFFECT ON OTHER RULINGS:

NY Ruling N065187, dated July 16, 2009, is modified with respect to the analysis. The imported refined sugar is considered an originating good because it is wholly obtained or produced entirely in the NAFTA territories.

Sincerely,

MONIKA R. BRENNER

Chief,

Valuation & Special Programs Branch

cc; Frank Troise
NIS, U.S. Customs and Border Protection
New York, NY

[ATTACHMENT D]

HQ H131645

OT:RR:CTF:VS H131645 KSG

DANIEL E. WALTZ
PATTON BOGGS ATTORNEYS AT LAW
2550 M STREET, NW
WASHINGTON, D.C. 20037-1350

Re: Modification of New York ruling N025726; NAFTA eligibility; sugar

DEAR MR. WALTZ:

This is in response to your letter dated April 4, 2008, which CBP addressed in New York Ruling N025726, dated April 30, 2008, dealing with imported refined sugar.

FACTS:

Mexican-origin raw sugar will be processed at sugar refining facilities in Canada to produce refined cane sugar. The polarity of the sugar is 99.9 degrees and will be packaged in 50 lb. bags and/or 1 metric ton tote bags.

CBP held in NY Ruling N025726, that the cane sugar would be an “originating” good under the North American Free Trade Agreement (“NAFTA”) because it was wholly obtained or produced in Mexico.

ISSUE:

Is the imported refined cane sugar eligible for preferential tariff preference under the North American Free Trade Agreement (“NAFTA”)?

LAW AND ANALYSIS:

Pursuant to General Note (“GN”) 12, HTSUS, for an article to be eligible for NAFTA preference, two criteria must be satisfied. First, the article in question must be “originating” under the terms of GN 12 and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR 102.20.

With regard to the first criteria, GN 12(b) provides, in pertinent part, as follows:

For purposes of this note, goods imported into the customs territory of the U.S. are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as goods originating in the territory of a NAFTA party only if: (i) they are goods wholly obtained or produced in the territory of Canada, Mexico and/or the U.S.; or (ii) they have been transformed in the territory of Canada, Mexico, and/or the U.S. so that each of the non-originating material used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s), and (t) of this note or the rules set forth therein, or the goods otherwise satisfy the applicable requirements of subdivisions (r), (s), and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or they are goods produced entirely in the territory of Canada, Mexico and/or the U.S. exclusively from originating materials.

As stated in the facts above, the refined sugar is not wholly produced or obtained in Mexico. However, it would be wholly obtained or produced

entirely in the territory of Canada and Mexico as set forth in GN 12(b)(i), and therefore, an originating good under GN 12.

Section 102.11, Customs 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 quota category. 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.

In this case, the sugar is not wholly obtained or produced exclusively from domestic materials. Therefore, we must proceed to 10 CFR 102.11(a)(3).

We assume for the purposes of this ruling that the imported refined sugar is classified in subheading 1701.99, HTSUS and the raw sugar is classified in subheading 1701.11, HTSUS.

The tariff shift rule set forth in 19 CFR 102.20 for goods of headings 1701–1702 is as follows:

A change to 1701 through 1702 from any other chapter.

Clearly, no chapter change takes place in this case. Therefore, we proceed to 19 CFR 102.11(b), which states that the country of origin of the single material that imparts the essential character to the good would determine the country of origin of the good. Pursuant to 19 CFR 102.18(b)(iii), if there is only one material that does not make the tariff shift, that single material would represent the essential character to the good under 19 CFR 102.11. In this case, the Mexican raw sugar would impart the essential character to the good. Therefore, the country of origin of the good would be considered Mexico.

The imported refined sugar would be an originating good for the purposes of the NAFTA and would be considered a product of Mexico for purposes of country of origin marking, rate of duty, and quota purposes.

HOLDING:

The imported refined sugar will be considered an originating good under the NAFTA because it is wholly obtained or produced entirely in the NAFTA territories. The country of origin of the imported refined sugar would be Mexico for purposes of country of origin marking, rate of duty, and for quota purposes.

EFFECT ON OTHER RULINGS:

NY Ruling N025726, dated April 30, 2008, is modified with respect to the analysis. The imported refined sugar is considered an originating good because it is wholly obtained or produced entirely in the NAFTA territories.


Sincerely,

MONIKA R. BRENNER

Chief,

Valuation & Special Programs Branch

cc; Frank Troise
NIS, U.S. Customs and Border Protection
New York, NY



**PROPOSED MODIFICATION OF FOUR RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE ELIGIBILITY OF CERTAIN
GARMENTS WITH BELTS (COMPOSITE GOODS) FOR
PREFERENTIAL TARIFF TREATMENT**

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

ACTION: Notice of proposed modification of four ruling letters and proposed revocation of any treatment relating to the eligibility of certain garments imported with belts (composite goods) for preferential tariff treatment under General Note 3(a)(v), the United States – Israel Free Trade Area Implementation Act, or the United States – Jordan Free Trade Area Implementation Act.

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 proposing to modify four ruling letters relating to the eligibility for preferential treatment under General Note 3(a)(v), the United States – Israel Free Trade Area Implementation Act, or the United States – Jordan Free Trade Area Implementation Act of certain garments imported with belts (composite goods). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before June 24, 2011.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20001 during regular business

hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202-325-0118.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Classification Branch, (202) 325-0046.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify New York (NY) Ruling Letter K80820, dated December 23, 2003; NY N013984, dated July 17, 2007; NY N019427, dated November 29, 2007; and NY N118184, dated August 24, 2010; relating to the eligibility for preferential treatment under General Note 3(a)(v), the United States – Israel Free Trade Area Implementation Act, or the United States – Jordan Free Trade Area Implementation Act of certain garments imported with belts (composite goods). Although in this notice CBP is specifically referring to the modification of NY K80820, NY N013984, NY N019427, and NY N118184, this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further

rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY K80820, NY N013984, NY N019427, and NY N118184, set forth as Attachments A through D to this document, CBP determined that certain pants or shorts imported with belts as composite goods did not qualify for preferential tariff treatment under General Note 3(a)(v), the United States – Israel Free Trade Area Implementation Act, or the United States – Jordan Free Trade Area Implementation Act because the accompanying belts were produced in China and merely added to pants or shorts which otherwise would qualify under the aforementioned preferential tariff programs. In all of the rulings, Treasury Decision (T.D.) 91–7 was cited as the reason for rejecting eligibility of the composite goods under the various preferential programs. We note, however, since the decision in T.D. 91–7, 19 U.S.C. § 3592 was enacted, along with the implementation of the textile and apparel regulations in 19 CFR § 102.21, which allows a single country of origin marking for composite goods. Therefore, in Headquarters Ruling (HQ) 563246, dated July 7, 2005, CBP considered the eligibility of certain woven cotton shorts produced in a Qualifying Industrial Zone (QIZ) for duty free treatment under the United States – Jordan Free Trade Area Implementation Act. As with the garments at issue in the cited NY rulings, the woven cotton shorts, produced within the QIZ and qualifying for preferential tariff treatment based upon that production, had Chinese-origin belts added to the shorts by placing the belts through the belt loops of the shorts in the QIZ prior to packaging and shipment to the United States. In HQ 563246, CBP determined that the shorts and belt were a composite good. As the origin of a textile composite good is determined by the component that determines the classification of the good, it was determined that the

composite good consisting of the shorts and belt was a product of Jordan. The NY rulings which CBP proposes to modify are not in conformity with HQ 563246.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY K80820, NY N013984, NY N019427, and NY N118184, and revoke or modify any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper preferential tariff treatment eligibility of the merchandise pursuant to the analysis set forth in proposed HQ H135360, HQ H135361 and HQ H141201, set forth as Attachments E through G to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 28, 2011

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY K80820

December 23, 2003

CLA-2-RR:NC:TA:361 K80820

CATEGORY: Classification

MS. STACY BAUMAN
AMERICAN SHIPPING COMPANY, INC.
140 SYLVAN AVENUE
ENGLEWOOD CLIFFS, NJ 07632

RE: Classification and country of origin determination for woman's woven pants; Duty-Free treatment for products of the West Bank, Gaza Strip, or a Qualifying Industrial Zone; General Note 3(a)(v); duty-free treatment for products of the under the United States-Jordan Free Trade Area Implementation Act; General Note 18; TD 91-7

DEAR MS. BAUMAN:

This is in reply to your letter dated December 2, 2003, submitted on behalf of your client Dress Barn Inc. Your request concerns the classification, and eligibility for preferential duty treatment for a garment that may be produced, in part, in a Qualifying Industrial Zone (QIZ), or in accordance with the United States-Jordan Free Trade Area Implementation Act. FACTS:

The pants, style DB3215, are constructed from 100 percent polyester woven fabric with a 100 percent polyester woven lining. The pants have a partially elasticized waistband with belt loops, a front fly zipper, a button at the waistband that closes in the left-over-right direction, side seam pockets, and hemmed leg openings. The pants will be imported with either a self fabric textile belt or a polyurethane belt.

Chapter 62, note 8 states, in part:

Garments of this chapter designed for left over right closure at the front shall be regarded as men's or boys' garments, and those designed for right over left closure at the front as women's or girls' garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes.

As the pants have a left over right front closure, the presumption is that they will be for men. However, it is clear based on the cut that they were designed for women. Therefore, the pants will be classified as a woman's garment.

You have indicated that the garment will be produced either in Jordan or in an approved "Qualifying Industrial Zone." The manufacturing operations for the shirt will be done in accordance with one of the following scenarios:

SCENARIO A

China Fabric is woven Waistband elastic is formed Pocketing fabric is formed Polyurethane belt is wholly made into a finished product Jordan or QIZ Body fabric is cut into components Elastic is cut into components All assembly of the pants is completed All finishing operations are completed in Jordan, garment with Chinese origin polyurethane belt is shipped directly to the US.

SCENARIO B

China Fabric is woven Waistband elastic is formed Pocketing fabric is formed Self-fabric belt is wholly made into a finished product Jordan or QIZ Body fabric is cut into components Elastic is cut into components All assembly of the pants is completed All finishing operations are completed in Jordan, garment with Chinese origin self-fabric belt is shipped directly to the US.

SCENARIO C

China Fabric is woven Waistband elastic is formed and cut to length Pocketing fabric is formed; pockets are made Polyurethane belt is wholly made into a finished product Jordan or QIZ Body fabric is cut into components All assembly of the pants is completed All finishing operations are completed in Jordan, garment with Chinese origin polyurethane belt is shipped directly to the US.

SCENARIO D

China Fabric is woven Waistband elastic is formed and cut to length Pocketing fabric is formed; pockets are made Self-fabric belt is wholly made into a finished product Jordan or QIZ Body fabric is cut into components All assembly of the pants is completed All finishing operations are completed in Jordan, garment with Chinese origin self-fabric belt is shipped directly to the US.

ISSUE:

What are the classification, status under the US-Israel Free Trade Agreement, and status under the United States-Jordan Free Trade Area Implementation Act of the subject merchandise? CLASSIFICATION:

The pants and polyurethane belt fall within the description of “sets” as provided in the Explanatory Notes. The pants and belt consist of at least two different articles which are, prima facie, classifiable in different headings; consist of products or articles put up together to meet a particular need or carry out a specific activity; and are put up in a manner suitable for sale directly to users without re-packing. As the belt is an accessory to the pants, the essential character of the set is imparted by the pants. The pants and self fabric belt are sold at retail as a unit and are considered to be a composite good. They are adapted to each other, are mutually complementary and together form a whole which would not normally be offered for sale in separate parts. The essential character of the pants and self-fabric belt is imparted by the pants.

The applicable subheading for the pants and polyurethane belt set, as well as the pants and self-fabric belt composite will be 6204.63.3510, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for Women’s...trousers...: Of man-made fibers. The general rate of duty is 28.8% ad valorem. Effective January 1, 2004, the general rate of duty will be 28.6% ad valorem.

The pants of the pants/polyurethane belt set fall within textile category designation 648; the pants and textile belt composite, as a unit, fall within textile category designation 648. 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.CBP.GOV. In addition, 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.

STATUS UNDER THE UNITED STATES-ISRAEL FREE TRADE AGREEMENT:

Pursuant to the authority conferred by section 9 of the U.S.-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. §2112 note), the President issued Proclamation No. 6955 dated November 13, 1996 (published in the Federal Register on November 18, 1996 (61 Fed. Reg. 58761)), which modified the Harmonized Tariff Schedule of the United States (HTSUS) (by creating a new General Note 3(a)(v)) to provide duty-free treatment to articles which are the product of the West Bank, Gaza Strip or a qualifying industrial zone, provided certain requirements are met. Such treatment was effective for products of the West Bank, Gaza Strip or a qualifying industrial zone entered or withdrawn from warehouse for consumption on or after November 21, 1996. Under General Note 3(a)(v), HTSUS, articles the products of the West Bank, Gaza Strip or a qualifying industrial zone which are imported directly to the U.S. from the West Bank, Gaza Strip, a qualifying industrial zone or Israel qualify for duty-free treatment, provided the sum of 1) the cost or value of materials produced in the West Bank, Gaza Strip, a qualifying industrial zone or Israel, plus 2) the direct costs of processing operations performed in the West Bank, Gaza Strip, a qualifying industrial zone or Israel, is not less than 35% of the appraised value of such articles when imported into the U.S. An article is considered to be a product of the West Bank, Gaza Strip or a qualifying industrial zone if it is either wholly the growth, product or manufacture of one of those areas or a new and different article of commerce that has been grown, produced or manufactured in one of those areas.

Under all of the scenarios noted above, the entities made up of the pants and belt (both textile and polyurethane) are not “products of the QIZ.” In all cases, the belts are products of China, and the mere repackaging of the belt with the pants does not substantially transform the belt into a product of the QIZ. Since all components of the entity do not meet the “products of” requirement, the set or composite is ineligible for consideration as a product of the QIZ. *See* Treasury Decision 91-7 (T.D. 91-7).

STATUS UNDER THE UNITED STATES-JORDAN FREE TRADE AREA IMPLEMENTATION ACT:

Title I of the United States-Jordan Free Trade Area Implementation Act of 2001, Pub. L. No. 107-43, 115 Stat. 243., referred to as the Jordan Free Trade Area Implementation Act, seeks to promote trade opportunities between the U.S. and the Hashemite Kingdom of Jordan. The JFTA provides preferential treatment for eligible apparel articles that: are the growth, product, or manufacture of Jordan; meet the 35 percent value content requirement; and are imported directly into the U.S. The rules for determining whether an article is entitled to preferential treatment under the JFTA are provided for in General Note (GN) 18, to the HTSUSA, as implemented by Presidential Proclamation 7512, dated December 7, 2001, 66 Fed. Reg. 64495, December

13, 2001. GN 18 provides, in part, as follows: (a) The products of Jordan described in Annex 2.1 of the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, entered into on October 24, 2000, are subject to duty as provided herein. Products of Jordan, as defined in subdivisions (b) through (d) of this note, that are imported into the customs territory of the United States and entered under a provision for which a rate of duty appears in the "Special" subcolumn followed by the "JO" in parentheses are eligible for the tariff treatment set forth in the "Special" subcolumn, in accordance with sections 101 and 102 of the United States-Jordan Free Trade Area Implementation Act (Public Law 107-43, 115 Stat. 243).

(b) For purposes of this note, subject to the provisions of subdivisions (d) and (e), goods imported into the customs territory of the United States are eligible for treatment as "products of Jordan" only if – (i) such goods are imported directly from Jordan into the customs territory of the United States, and (ii) they are – (A) wholly the growth, product or manufacture of Jordan, or (B) new or different articles of commerce that have been grown, produced or manufactured in Jordan and meet the requirements of subdivision (c) of this note.

(c) * * *(ii) For purposes of subdivision (b)(ii)(B), goods are eligible for the tariff treatment provided in this note if the sum of – (A) the cost or value of the materials produced in Jordan, plus (B) the direct costs of processing operations performed in Jordan, is not less than 35 percent of the appraised value of such article at the time it is entered. If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this subdivision applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in this subdivision

(d) Textile and apparel articles. For purposes of this note, a textile or apparel article imported directly from Jordan into the Customs territory of the United States shall be eligible for the tariff treatment provided in subdivision (a) of this note only if – (A) the article is wholly obtained or produced in Jordan; (B) the article is a yarn, thread, twine, cordage, rope, cable or braiding, and (i) the constituent staple fibers are spun in Jordan, or (ii) the continuous filament is extruded in Jordan; (C) the article is a fabric, including a fabric classified in chapter 59 of the tariff schedule, and the constituent fibers, filaments or yarns are woven, knitted, needled, tufted, felted, entangled or transformed by any other fabric-making process in Jordan; or (D) the article is any other textile or apparel article that is wholly assembled in Jordan from its component pieces. Such textile and apparel articles not wholly obtained or produced in Jordan must comply with the requirements of this subdivision and of subdivision (c)(ii) of this note.

As noted above in the discussion of QIZ eligibility, under all of the scenarios the entities made up of the pants and belt (both textile and polyurethane) are not "products of the Jordan" under the U.S. - Jordan Free Trade Area Implementation Act. In all cases, the belts are products of China, and the mere repackaging of the belt with the pants does not substantially transform the belt into a product of Jordan under the act. Since all components of the entity do not meet the "products of" requirement, the set or composite is ineligible

for consideration as a product of the Jordan under the act. *See* Treasury Decision 91-7 (T.D. 91-7).

HOLDING:

Based on the information provided, the pants and polyurethane belt produced under the scenarios indicated above are considered neither products of the QIZ, nor products under the U.S. - Jordan Free Trade Area Implementation Act.

Based on the information provided, the pants and textile belt produced under the scenarios indicated above are considered neither products of the QIZ, nor products under the U.S. - Jordan Free Trade Area Implementation Act.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 C.F.R. §177.9(b)(1). This sections states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 C.F.R. §177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 C.F.R. §177.2.

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 Angela De Gaetano at 646-733-3052.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY N013984

July 17, 2007

CLA-2-RR:NC:TA:358

CATEGORY: Classification

Ms. REBECCA CHEUNG
MACY'S MERCHANDISING GROUP
11 PENN PLAZA
NEW YORK, NY 10001

RE: Classification and country of origin determination for boys' woven shorts; Products of the West Bank, the Gaza Strip or a Qualifying Industrial Zone; General Note 3(a)(v); 19 CFR 102.21(c)(2); tariff shift.

DEAR Ms. CHEUNG:

This is in reply to your letter dated July 6, 2007. Your request concerns the classification, and eligibility for preferential duty treatment for garments that may be produced in a Qualifying Industrial Zone (QIZ), in accordance with the United States-Israel Free Trade Area Implementation Act. FACTS:

The submitted shorts, style 1000, are constructed from 100 percent cotton yarn dyed fabric. The shorts have five belt loops, a front fly zipper, a button at the waistband that closes in the left-over-right direction, side entry pockets below the waist, two set-in rear welt pockets with button closures, expandable pant leg cargo pockets and hemmed leg openings. The shorts will be imported with a textile web belt. The shorts, style 2000, are identical except for a polyurethane belt. The textile web belt and the polyurethane belt both have metal D ring closures. A sample of Style 2000 was not included in the submission.

You have indicated that the garments will be produced in Egypt in an approved "Qualifying Industrial Zone." The manufacturing operations for the shorts are done in accordance with one of the following scenarios, A, B and C:

Under scenarios A, B and C the shorts will be made from fabric imported in rolls to a QIZ in Egypt where they will be cut into component parts and fully assembled. At issue is the duty free treatment of both styles with both the textile belt and the polyurethane belt made under each of three scenarios, A, B and C.

You describe the scenarios as follows:

SCENARIO A

Belt wholly formed in China, imported into Egypt QIZ to be assembled with shorts for import into the U.S.

SCENARIO B

Belt material (narrow fabric) would be formed in China, cut to width in China and then shipped to Egypt QIZ in rolls. The belt material will be cut to length and formed into belt in Egypt QIZ, assembled with the Egypt QIZ-made shorts, and then the entire good shipped to the U.S.

SCENARIO C

Belt material (narrow fabric) would be formed in China, cut to width in China and then shipped to Egypt QIZ in rolls. The belt material will be cut to length

and formed into belt in Egypt QIZ, assembled with the Egypt QIZ-made shorts, and then the entire good shipped to the U.S.

You advise in telephone conversation that in scenarios B and C the belt fabric is sewn and the belt buckle is attached in Egypt.

ISSUE:

What are the classification and status under the US-Israel Free Trade Agreement of the subject merchandise?

CLASSIFICATION:

The shorts and polyurethane belt fall within the description of “sets” as provided in the Explanatory Notes. The shorts and belt consist of at least two different articles which are, prima facie, classifiable in different headings; consist of products or articles put up together to meet a particular need or carry out a specific activity; and are put up in a manner suitable for sale directly to users without re-packing. As the belt is an accessory to the shorts, the essential character of the set is imparted by the shorts. The shorts and fabric belt are sold at retail as a unit and are considered to be a composite good. They are adapted to each other, are mutually complementary and together form a whole which would not normally be offered for sale in separate parts. The essential character of the shorts and self-fabric belt is imparted by the shorts.

The applicable subheading for the shorts and polyurethane belt set, as well as the shorts and self-fabric belt composite will be 6203.42.4061, Harmonized Tariff Schedule of the United States (HTSUS), which provides for men’s or boys’ trousers and shorts, of cotton, boys’ shorts, other. The general rate of duty is 16.6% ad valorem.

Boys’ cotton shorts with polyurethane belt set fall within textile category designation 347. Boys’ cotton shorts with textile belt fall within textile category designation 347. 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.CBP.GOV. In addition, 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.

COUNTRY OF ORIGIN - LAW AND ANALYSIS:

Section 334 of the Uruguay Round Agreements Act (codified at 19 U.S.C. 3592), enacted on December 8, 1994, provided rules of origin for textiles and apparel entered, or withdrawn from warehouse for consumption, on and after July 1, 1996. Section 102.21, Customs Regulations (19 C.F.R. 102.21), published September 5, 1995, in the Federal Register, implements Section 334 (60 FR 46188). Section 334 of the URAA was amended by Section 405 of the Trade and Development Act of 2000, enacted on May 18, 2000, and accordingly, section 102.21 was amended (68 Fed. Reg. 8711). Thus, the country of

origin of a textile or apparel product shall be determined by the sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Section 102.21, paragraph (c)(1) states that “The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that “Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section:”

Paragraph (e) in pertinent part states that “The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section”:

HTSUS Tariff shift and/or other requirements

6201–6208 If the good consists of two or more component parts, a change to an assembled good of heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

Under Scenario A noted above, the entities made up of the shorts and belt (both textile and polyurethane) are not “products of the QIZ.” Under this scenario, the belts are products of China, and the mere repackaging of the belt with the shorts does not substantially transform the belt into a product of the QIZ. Since all components of the entity do not meet the “products of” requirement, the set or composite is ineligible for consideration as a product of the QIZ. See Treasury Decision 91–7 (T.D. 91–7).

Under Scenario B and Scenario C as the short consists of two or more component parts, and is wholly assembled in a single country, that is Egypt, the terms of the tariff shift are met. The country of origin is conferred in Egypt, QIZ, for both Scenario A and Scenario B.

STATUS UNDER THE UNITED STATES-ISRAEL FREE TRADE AGREEMENT:

Pursuant to the authority conferred by section 9 of the U.S. - Israel Free Trade Area Implementation Act of 1985 (19 U.S.C § 2112 note), the President issued Proclamation No. 6955 dated November 13, 1996 (published in the Federal Register on November 18, 1996 (61 Fed. Reg. 58761)), which modified the Harmonized Tariff Schedule of the United States (HTSUS) by creating a new General Note 3 (a)(v) to provide duty-free treatment to articles which are the product of the West Bank, Gaza Strip or a qualifying industrial zone (QIZ), provided certain requirements are met. Such treatment was effective for products of the West Bank, Gaza Strip or a qualifying industrial zone entered or withdrawn from warehouse for consumption on or after November 21, 1996.

You state that the processing operations will be performed in a QIZ in Egypt for Scenarios A and B. General Note 3(a)(v)(G), HTSUS, defines a “qualifying industrial zone” as any area that: “(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt; (2) has been designated by local

authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and (3) has been designated by the U.S. Trade representative in a notice published in the Federal Register as a qualifying industrial zone.”

Presidential Proclamation 6955 delegated to the United States Trade Representative the authority to designate qualifying industrial zones. *See* GN 3(a)(v)(G)(3), *supra*. The governments of Israel and Egypt jointly requested the designation as a qualifying industrial zone of areas comprising a Greater Cairo zone, Alexandria zone, Suez Canal zone and Central Delta zone. The names and locations of the factories comprising these four zones were specified on maps and materials submitted by Egypt and Israel and on file with the Office of the U.S. Trade Representative. For the purposes of this letter, we will assume that the QIZ you are using will meet the requirements of General Note 3(a)(v)(G), HTSUS.

Under General Note 3 (a)(v), HTSUS, articles the products of the West Bank, Gaza Strip or a QIZ which are imported directly to the United States from the West Bank, Gaza Strip, a QIZ or Israel, qualify for duty-free treatment, provided the sum of (1) the cost or value of materials produced in the West Bank, Gaza Strip, or QIZ or Israel, plus (2) the direct costs of processing operations performed in the West Bank, Gaza Strip, a QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the United States. An article is considered to be a product of the West Bank, Gaza Strip, or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new and different article of commerce that has been grown, produced or manufactured in one of those areas.

With respect to the requirement that the articles be imported directly, General Note 3(a)(v) (B)(1) provides that:

Articles are “imported directly” for purposes of this paragraph if:

(1) they are shipped directly from the West Bank, the Gaza Strip, a qualifying industrial zone or Israel into the United States without passing through the territory of any intermediate country;

You have stated in your letter that the garments in Scenarios A, B and C will be imported directly from the QIZ to the United States. It cannot be ascertained whether the 35% value content requirement is met until the “appraised value” of the merchandise is determined at the time of entry into the United States.

HOLDING:

As noted in the discussion of QIZ eligibility, under Scenario A, the entities made up of the shorts and belt (both textile and polyurethane) are not “products of the QIZ.” Under such scenario, the belts are products of China, and the mere repackaging of the belt with the shorts does not substantially transform the belt into a product of the QIZ. Since all components of the entity do not meet the “products of” requirement, the set or composite is ineligible for consideration as a product of the QIZ. *See* Treasury Decision 91-7 (T.D. 91-7).

Based on the information provided, the shorts and belt (both textile and polyurethane) produced under Scenario A indicated above are considered neither products of the QIZ, nor products under the U.S. - Israel Free Trade Area Implementation Act.

Based upon the information provided, the garments in Scenarios B and C will be considered a product of the Qualifying Industrial Zone and will be eligible for preferential duty treatment under General Note 3 (a)(v), HTSUS, assuming that the garments are imported directly from the Qualifying Industrial Zone to the United States and the 35% value content requirement is satisfied. A determination will be made at the time of entry of the merchandise into the United States, whether the above requirements are met.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

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 Bruce Kirschner at 646-733-3048.

Sincerely,

ROBERT B. SWIERUPSKI,

Director

National Commodity Specialist Division.

[ATTACHMENT C]

NY N019427

November 29, 2007

CLA-2-OT:RR:NC:TA:361

CATEGORY: Classification

Ms. REBECCA CHEUNG
MACY'S MERCHANDISING GROUP
11 PENN PLAZA
NEW YORK, NEW YORK 10001

RE: Classification and country of origin determination for a women's woven pants with a sash belt; Products of the West Bank, the Gaza Strip or a Qualifying Industrial Zone; General Note 3(a)(v); 19 CFR 102.21(c)(2); tariff shift; 19 CFR (c)(4)

DEAR Ms. CHEUNG:

This is in reply to your letter dated November 2, 2007, requesting classification and eligibility for preferential duty treatment for garments that may be produced in a Qualifying Industrial Zone (QIZ), in accordance with the United States-Israel Free Trade Area Implementation Act for a pair of women's pants with a sash belt, which will be imported into the United States.

FACTS:

Style 3000 is a pair of women's pants constructed from 98 percent cotton and 2 percent spandex woven twill fabric. The pants have a flat waistband with five belt loops, a front zipper with a button and a hook and bar closure that fastens right over left and a woven textile sash belt threaded through the belt loops. The pants also feature two front pockets, two back pockets with a button closure and hemmed leg openings with a side slit.

You present four scenarios for the manufacturing processes. The manufacturing operations for the pants and sash are as follows:

In all four scenarios foreign fabric for the pants is shipped in rolls to Swiss Garments Company in 10th of Ramadan City, Egypt (QIZ). The fabric is cut and assembled in the QIZ into pants.

SCENARIO A:

The sash belt is formed in China and shipped to the QIZ factory in Egypt. The sash belt is threaded through the pant belt loops. The pants and sash belt will be exported directly to the United States.

SCENARIO B:

Foreign man-made fabric for the sash belt will be shipped in rolls to the QIZ factory in Egypt. The QIZ factory will cut, hem and form the sash belt. The sash belt will then be threaded through the belt loops. The pants and sash belt will be exported directly to the United States.

SCENARIO C:

Man-made fabric for the sash belt will be manufactured in Egypt and shipped in rolls to the QIZ factory in Egypt. The QIZ factory will cut, hem and form the sash belt. The sash belt will then be threaded through the belt loops. The pants and sash belt will be exported directly to the United States.

SCENARIO D:

Man-made fabric for the sash belt will be manufactured in a QIZ factory in Egypt and shipped in rolls to the QIZ factory in Egypt processing the pants. The pants QIZ factory will cut, hem and form the sash belt. The sash belt will be threaded through the belt loops. The pants and sash belt will be exported directly to the United States.

ISSUE:

What is the classification? Will the garments qualify for duty-free treatment under General Note 3(a)(v), HTSUS, when imported into the U.S?

CLASSIFICATION:

The pants and sash belt fall within the description of a composite good as provided in the Explanatory Notes to the Harmonized Tariff Schedule. The pants and sash belt are sold together at retail as a unit. They are adapted to each other, are mutually complementary and together form a whole that would not normally be offered for sale in separate parts. Therefore, the pants and sash belt are considered a composite good, and as such, are classified under the same Harmonized Tariff number, and the same category number applies to the entire unit. Classification is based on the item that provides the essential character to the unit. As the belt is an accessory to the pants, the essential character is imparted by the pants.

The applicable subheading for style 3000 will be 6204.62.4021, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Women's trousers (other than swimwear): Of cotton: Other: Other: Other: Other: Trousers: Women's: Other. The duty rate will be 16.6% ad valorem.

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

Style 3000 falls within textile category designation 348. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. 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 negotiations 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.

COUNTRY OF ORIGIN - LAW AND ANALYSIS:

Section 334 of the Uruguay Round Agreements Act (codified at 19 U.S.C. 3592), enacted on December 8, 1994, provided rules of origin for textiles and apparel entered, or withdrawn from warehouse for consumption, on and after July 1, 1996. Section 102.21, Customs Regulations (19 C.F.R. 102.21), pub-

lished September 5, 1995, in the Federal Register, implements Section 334 (60 FR 46188). Section 334 of the URAA was amended by Section 405 of the Trade and Development Act of 2000, enacted on May 18, 2000, and accordingly, section 102.21 was amended (68 Fed. Reg. 8711). Thus, the country of origin of a textile or apparel product shall be determined by the sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Section 102.21, paragraph (c)(1) states that “The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that “Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.”

Paragraph (e) in pertinent part states that “The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section”:

HTSUS Tariff shift and/or other requirements

6201–6208 If the good consists of two or more component parts, a change to an assembled good of heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

As the garment consists of two or more component parts, and is wholly assembled in a single country, that is Egypt, the terms of the tariff shift are met. The country of origin is conferred in Egypt (QIZ) for Scenario B, Scenario C and Scenario D. Since the garment is not wholly assembled in a single country in Scenario A, Section 102.21 (c) (2) is inapplicable.

Section 102.21 (c) (3) states that, “Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section”: If the good was knit to shape, the country of origin of the good is the single country, territory or insular possession in which the good was knit; or except for goods of heading 5609, 5807, 5811,6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory or insular possession, the country of origin of the good is the country, territory or insular possession in which the good was wholly assembled. Since the garment is neither knit to shape nor wholly assembled in a single country, Section 102.21 (c) (3) is inapplicable for Scenario A.

Section 102.21 (c)(4) states, “Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred”. The most important assembly operations in Scenario A is cutting and assembling the pants. Therefore, the country of origin is Egypt, the country in which these operations are performed.

STATUS UNDER THE UNITED STATES-ISRAEL FREE TRADE AGREEMENT.

Pursuant to the authority conferred by section 9 of the U.S. - Israel Free Trade Area Implementation Act of 1985 (19 U.S.C § 2112 note), the President issued Proclamation No. 6955 dated November 13, 1996 (published in the Federal Register on November 18, 1996 (61 Fed. Reg. 58761)), which modified the Harmonized Tariff Schedule of the United States (HTSUS) by creating a new General Note 3 (a)(v) to provide duty-free treatment to articles which are the product of the West Bank, Gaza Strip or a qualifying industrial zone (QIZ), provided certain requirements are met. Such treatment was effective for products of the West Bank, Gaza Strip or a qualifying industrial zone entered or withdrawn from warehouse for consumption on or after November 21, 1996.

You state that the processing operations will be performed in a QIZ in Egypt for Scenarios A, B, C and D. General Note 3(a)(v)(G), HTSUS, defines a "qualifying industrial zone" as any area that: "(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt; (2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and (3) has been designated by the U.S. Trade representative in a notice published in the Federal Register as a qualifying industrial zone."

Presidential Proclamation 6955 delegated to the United States Trade Representative the authority to designate qualifying industrial zones. See GN 3(a)(v)(G)(3), *supra*. The governments of Israel and Egypt jointly requested the designation as a qualifying industrial zone of areas comprising a Greater Cairo zone, Alexandria zone, Suez Canal zone and Central Delta zone. The names and locations of the factories comprising these four zones were specified on maps and materials submitted by Egypt and Israel and on file with the Office of the U.S. Trade Representative. For the purposes of this letter, we will assume that the QIZ you are using will meet the requirements of General Note 3(a)(v)(G), HTSUS.

Under General Note 3 (a)(v), HTSUS, articles the products of the West Bank, Gaza Strip or a QIZ which are imported directly to the United States from the West Bank, Gaza Strip, a QIZ or Israel, qualify for duty-free treatment, provided the sum of (1) the cost or value of materials produced in the West Bank, Gaza Strip, or QIZ or Israel, plus (2) the direct costs of processing operations performed in the West Bank, Gaza Strip, a QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the United States. An article is considered to be a product of the West Bank, Gaza Strip, or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new and different article of commerce that has been grown, produced or manufactured in one of those areas.

With respect to the requirement that the articles be imported directly, General Note 3(a)(v) (B)(1) provides that:

Articles are "imported directly" for purposes of this paragraph if:

(1) they are shipped directly from the West Bank, the Gaza Strip, a qualifying industrial zone or Israel into the United States without passing through the territory of any intermediate country;

You have stated in your letter that the garments in Scenarios B, C and D will be imported directly from the QIZ to the United States. It cannot be ascertained whether the 35% value content requirement is met until the “appraised value” of the merchandise is determined at the time of entry into the United States.

For Scenario A, the sash belt is a product of China, and the mere repackaging of the sash belt with the pants does not substantially transform the sash belt into a product of the QIZ. Since all components of the entity do not meet the “products of” requirement, the set or composite is ineligible for consideration as a product of the QIZ. Treasury Decision (TD) 91-7, which is an interpretive rule concerning, among other things, the applicability of special tariff treatment programs to collections of articles classified under a single tariff provision such as sets, mixtures, and composite goods, addresses the origin result for the imported pants with a sash belt. In addition to recognizing that there may be multiple countries of origin for these type articles, TD 91-7 specifically states that where an entire imported entity (set or composite good) is not the “product of” the beneficiary country, neither the entity nor any part thereof is entitled to preferential rates of duty.

HOLDING:

The country of origin of the submitted garment in all four scenarios is Egypt. Based upon international textile trade agreements, products of Egypt are not presently subject to visa requirements or quota restraints.

For Scenario A, the entity made up of the pants and sash belt is not the “product of the QIZ.” Based upon the information submitted, the garments in Scenarios B, C and D will be considered a product of the Qualifying Industrial Zone (Egypt) and will be eligible for preferential duty treatment under General Note 3 (a)(v), HTSUS, assuming that the garments are imported directly from the Qualifying Industrial Zone to the United States and the 35% value content requirement is satisfied. A determination will be made at the time of entry of the merchandise into the United States, whether the above requirements are met.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

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 Peggy Fitzgerald at 646-733-3052.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

NY N118184

August 24, 2010

CLA-2-OT:RR:NC:TA:361

CATEGORY: Classification

Ms. ANNETTE DIAMOND
LIZ CLAIBORNE INC.
2 CLAIBORNE AVENUE HQ2 7/S
NORTH BERGEN, NJ 07047

RE: Classification and country of origin determination for women's woven pants with a fabric belt; Products of the West Bank, the Gaza Strip or a Qualifying Industrial Zone; General Note 3(a)(v); 19 CFR 102.21(c)(4)

DEAR Ms. DIAMOND:

This is in reply to your letter dated July 30, 2010, requesting classification and eligibility for preferential duty treatment for a pair of women's pants with a fabric belt.

FACTS:

The submitted sample, Axxcess style AQMU6755, is a pair of women's pants with a textile belt. The pants are constructed from 98 percent cotton and 2 percent spandex woven fabric. The capri length pants have a flat waistband with five belt loops; a left over right fly opening with a zipper and button closure; two front pockets; one coin pocket; two back patch pockets with embroidery; and hemmed leg openings with a turned up cuff. As this garment has a left over right closure, the presumption is that the garment will be for men. However, it is clear based on the cut of the garment that it was designed for women. Therefore, the pants will be classified as a woman's garment. A woven textile belt with a buckle has been threaded through the belt loops. The belt is constructed from 100 percent polyester fabric.

You state the manufacturing operations for the pants and belts are as follows: The Chinese fabric for the pants is shipped in rolls to the QIZ facility. The fabric is cut and assembled in the Egypt QIZ into pants. The textile belt will be made in China and shipped to the Egypt QIZ where it will be looped into the garment. The pants and textile belt will be exported directly to the United States.

ISSUE:

What is the classification? Will the garments qualify for duty-free treatment under General Note 3(a)(v), HTSUS, when imported into the U.S?

CLASSIFICATION:

The pants and textile belt fall within the description of a composite good as provided in the Explanatory Notes to the Harmonized Tariff Schedule. The pants and textile belt are sold together at retail as a unit. They are adapted to each other, are mutually complementary and together form a whole that would not normally be offered for sale in separate parts. Therefore, the pants and belt are considered a composite good, and as such, are classified under the same Harmonized Tariff number, and the same category number applies

to the entire unit. Classification is based on the item that provides the essential character to the unit. As the belt is an accessory to the pants, the essential character is imparted by the pants.

The applicable subheading for Axxcess style AQMU6755 will be 6204.62.4011, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Women's trousers (other than swimwear): Of cotton: Other: Other: Other: Other: Trousers: Women's: Blue denim. The duty rate will be 16.6% ad valorem.

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

COUNTRY OF ORIGIN — LAW AND ANALYSIS:

Section 334 of the Uruguay Round Agreements Act (codified at 19 U.S.C. 3592), enacted on December 8, 1994, provided rules of origin for textiles and apparel entered, or withdrawn from warehouse for consumption, on and after July 1, 1996. Section 102.21, Customs Regulations (19 C.F.R. 102.21), published September 5, 1995, in the Federal Register, implements Section 334 (60 FR 46188). Section 334 of the URAA was amended by Section 405 of the Trade and Development Act of 2000, enacted on May 18, 2000, and accordingly, section 102.21 was amended (68 Fed. Reg. 8711). Thus, the country of origin of a textile or apparel product shall be determined by the sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Section 102.21, paragraph (c)(1) states that "The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section:"

Paragraph (e) in pertinent part states that "The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section":

HTSUS Tariff shift and/or other requirements

6201-6208 If the good consists of two or more component parts, a change to an assembled good of heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

As the garment consists of two or more component parts, and the garment is not wholly assembled in a single country, Section 102.21 (c) (2) is inapplicable.

Section 102.21 (c) (3) states that, "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section": If the good was knit to shape, the country of origin of the good is the

single country, territory or insular possession in which the good was knit; or except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory or insular possession, the country of origin of the good is the country, territory or insular possession in which the good was wholly assembled. Since the garment is neither knit to shape nor wholly assembled in a single country, Section 102.21 (c) (3) is inapplicable.

Section 102.21 (c)(4) states, "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred". The most important assembly operations is cutting and assembling the pants. Therefore, the country of origin is Egypt, the country in which these operations are performed.

STATUS UNDER THE UNITED STATES-ISRAEL FREE TRADE AGREEMENT.

Pursuant to the authority conferred by section 9 of the U.S. - Israel Free Trade Area Implementation Act of 1985 (19 U.S.C § 2112 note), the President issued Proclamation No. 6955 dated November 13, 1996 (published in the Federal Register on November 18, 1996 (61 Fed. Reg. 58761)), which modified the Harmonized Tariff Schedule of the United States (HTSUS) by creating a new General Note 3 (a)(v) to provide duty-free treatment to articles which are the product of the West Bank, Gaza Strip or a qualifying industrial zone (QIZ), provided certain requirements are met. Such treatment was effective for products of the West Bank, Gaza Strip or a qualifying industrial zone entered or withdrawn from warehouse for consumption on or after November 21, 1996.

You state that the processing operations will be performed in a QIZ in Egypt. General Note 3(a)(v)(G), HTSUS, defines a "qualifying industrial zone" as any area that: "(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt; (2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and (3) has been designated by the U.S. Trade representative in a notice published in the Federal Register as a qualifying industrial zone."

Presidential Proclamation 6955 delegated to the United States Trade Representative the authority to designate qualifying industrial zones. See GN 3(a)(v)(G)(3), supra. The governments of Israel and Egypt jointly requested the designation as a qualifying industrial zone of areas comprising a Greater Cairo zone, Alexandria zone, Suez Canal zone and Central Delta zone. The names and locations of the factories comprising these four zones were specified on maps and materials submitted by Egypt and Israel and on file with the Office of the U.S. Trade Representative. For the purposes of this letter, we will assume that the QIZ you are using will meet the requirements of General Note 3(a)(v)(G), HTSUS.

Under General Note 3 (a)(v), HTSUS, articles the products of the West Bank, Gaza Strip or a QIZ which are imported directly to the United States from the West Bank, Gaza Strip, a QIZ or Israel, qualify for duty-free treatment,

provided the sum of (1) the cost or value of materials produced in the West Bank, Gaza Strip, or QIZ or Israel, plus (2) the direct costs of processing operations performed in the West Bank, Gaza Strip, a QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the United States. An article is considered to be a product of the West Bank, Gaza Strip, or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new and different article of commerce that has been grown, produced or manufactured in one of those areas.

With respect to the requirement that the articles be imported directly, General Note 3(a)(v) (B)(1) provides that:

Articles are “imported directly” for purposes of this paragraph if:

(1) they are shipped directly from the West Bank, the Gaza Strip, a qualifying industrial zone or Israel into the United States without passing through the territory of any intermediate country;

You have stated in your letter that the garments will be imported directly from the QIZ to the United States. It cannot be ascertained whether the 35% value content requirement is met until the “appraised value” of the merchandise is determined at the time of entry into the United States.

The fabric belt is a product of China, and the mere repackaging of the fabric belt with the pants does not substantially transform the fabric belt into a product of the QIZ. Since all components of the entity do not meet the “products of” requirement, the set or composite is ineligible for consideration as a product of the QIZ. Treasury Decision (TD) 91-7, which is an interpretive rule concerning, among other things, the applicability of special tariff treatment programs to collections of articles classified under a single tariff provision such as sets, mixtures, and composite goods, addresses the origin result for the imported pants with a textile belt. In addition to recognizing that there may be multiple countries of origin for these type articles, TD 91-7 specifically states that where an entire imported entity (set or composite good) is not the “product of” the beneficiary country, neither the entity nor any part thereof is entitled to preferential rates of duty.

HOLDING:

The country of origin of the submitted garment is Egypt. The entity made up of the pants and textile belt is not the “product of the QIZ.”

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

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 Peggy Fitzgerald at 646-733-3052.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT E]

HQ H135360
 OT:RR:CTF:VS H135360 CMR
 CATEGORY: Classification

Ms. STACY BAUMAN
 AMERICAN SHIPPING COMPANY, INC.
 140 SYLVAN AVENUE
 ENGLEWOOD CLIFFS, NJ 07632

RE: Modification of New York Ruling Letter K80820; eligibility of composite good consisting of pants with a self-fabric belt for preferential tariff treatment under General Note 3(a)(v) of the Harmonized Tariff Schedule of the United States (HTSUS) and under the United States – Jordan Free Trade Area Implementation Act

DEAR Ms. BAUMAN:

Customs and Border Protection (CBP) issued New York Ruling Letter (NY) K80820, dated December 23, 2003, to you in response to your request on behalf of Dress Barn Inc. for a ruling on the classification and eligibility for preferential tariff treatment of a garment produced, in part, in a Qualifying Industrial Zone (QIZ), or in Jordan. We have had occasion to review the decision in NY K80820. With respect to the composite good, consisting of the pants and a self-fabric textile belt, and being denied preferential tariff treatment as a product of a QIZ or a product of Jordan, we erred. NY K80820 is modified, accordingly, as set forth below.

FACTS:

As set forth in NY K80820, in relevant part:

The pants at issue, style DB3215, are constructed from 100 percent polyester woven fabric with a 100 percent polyester woven lining. The pants have a partially elasticized waistband with belt loops, a front fly zipper, a button at the waistband that closes in the left-over-right direction, side seam pockets, and hemmed leg openings. The pants will be imported with either a self fabric textile belt or a polyurethane belt.

* * *

You have indicated that the garment will be produced either in Jordan or in an approved “Qualifying Industrial Zone.” The manufacturing operations for the [garment] will be done in accordance with one of the following scenarios:

* * *

*SCENARIO B**China*

- Fabric is woven
- Waistband elastic is formed
- Pocketing fabric is formed
- Self-fabric belt is wholly made into a finished product

Jordan or QIZ

- Body fabric is cut into components
- Elastic is cut into components
- All assembly of the pants is completed
- All finishing operations are completed in Jordan, garment with Chinese origin self-fabric belt is shipped directly to the US.

* * *

*SCENARIO D**China*

- Fabric is woven
- Waistband elastic is formed and cut to length
- Pocketing fabric is formed; pockets are made
- Self-fabric belt is wholly made into a finished product

Jordan or QIZ

- Body fabric is cut into components
- All assembly of the pants is completed
- All finishing operations are completed in Jordan, garment with Chinese origin self-fabric belt is shipped directly to the US.

ISSUE:

Is the composite good consisting of polyester woven pants and a self-fabric textile belt a product of Jordan qualifying for preferential treatment under the United States – Jordan Free Trade Area Implementation Act or a product of a QIZ qualifying for preferential treatment under GN 3(a)(v), HTSUS?

LAW AND ANALYSIS:

On October 24, 2000, the United States and the Hashemite Kingdom of Jordan signed the U.S.-Jordan Free Trade Agreement (JFTA). The provisions of the JFTA were adopted by the United States with the enactment on September 28, 2001 of the United States-Jordan Free Trade Area Implementation Act (the “JFTA Act”), Public Law 107–43, 115 Stat. 243 (19 U.S.C. 2112 note). On December 7, 2001, the President signed Proclamation 7512 to implement the provisions of the JFTA. The Proclamation, published in the *Federal Register* on December 13, 2001 (66 FR 64497), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of the Proclamation. General Note (GN) 18, HTSUS, incorporated the relevant U.S.-Jordan Free Trade Agreement rules of origin as set forth in the United States-Jordan Free Trade Area Implementation Act. Customs and Border Protection (CBP) Regulations implementing the JFTA are set

forth in Volume 19 of the Code of Federal Regulations at Part 10, Subpart K, §§ 10.701 through 10.712 (19 CFR §§ 10.701 through 10.712).

Under GN 3(a)(v), HTSUS, articles which are the product of the West Bank, the Gaza Strip or a QIZ and which are imported directly to the United States from the West Bank, the Gaza Strip, a QIZ or Israel qualify for duty-free treatment, provided the sum of (1) the cost or value of materials produced in the West Bank, the Gaza Strip, QIZ, or Israel, plus (2) the direct costs of processing operations performed in the West Bank, the Gaza Strip, QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the U.S. An article is considered to be a “product of” the West Bank, the Gaza Strip, or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new or different article of commerce that has been grown, produced or manufactured in one of those areas.

NY K80820 classified the pants and self fabric belt combination as a composite good of heading 6204, HTSUS. In determining whether the pants and belt combination at issue is eligible for preferential treatment under the JFTA, we look to GN 18 which provides at paragraph (b):

For purposes of this note, subject to the provisions of subdivisions (d) and (e), goods imported into the customs territory of the United States are eligible for treatment as “products of Jordan” only if—

- (i) such goods are imported directly from Jordan into the customs territory of the United States, and
- (ii) they are—
 - (A) wholly the growth, product or manufacture of Jordan, or
 - (B) new or different articles of commerce that have been grown, produced or manufactured in Jordan and meet the requirements of subdivision (c) of this note.

Paragraph (d) of GN 18 provides in relevant part:

(d) *Textile and apparel articles.*

- (i) For purposes of this note, a textile or apparel article imported directly from Jordan into the customs territory of the United States shall be eligible for tariff treatment provided in subdivision (a) of this note only if —

* * *

- (D) the article is any other textile or apparel article that is wholly assembled in Jordan from its component pieces.

Such textile and apparel articles not wholly obtained or produced in Jordan must comply with the requirements of this subdivision and of subdivision (c)(ii) of this note.

Paragraph (c)(ii) of GN 18 provides, in pertinent part:

. . ., goods are eligible for the tariff treatment provided in this note if the sum of—

- (A) the cost or value of the materials produced in Jordan, plus

(B) the direct costs of processing operations performed in Jordan, is not less than 35 percent of the appraised value of such article at the time it is entered. * * *

Therefore, in this case, in order for the pants and belt combination to be a “products of Jordan” eligible for preferential tariff treatment under the JFTA, the composite good must be produced or manufactured in Jordan into new or different article of commerce and meet the 35 percent value-added requirement of GN 18(c)(ii).

As the goods are classifiable under heading 6204, HTSUS, the textile and apparel provision of GN 18(d) cited above applies. We must also refer to the CBP Regulations applicable to the JFTA. Section 10.709 (19 CFR § 10.709) provides in relevant part:

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a good imported directly from Jordan into the customs territory of the United States will be eligible for preferential tariff treatment under the US–JFTA only if:

- (1) The good is either:
 - (i) Wholly the growth, product, or manufacture of Jordan; or
 - (ii) A new or different article of commerce that has been grown, produced, or manufactured in Jordan; and
- (2) With respect to a good described in paragraph (a)(1)(ii) of this section, the good satisfies the value-content requirement specified in § 10.710 of this subpart.

* * *

(c) *Textile and apparel goods.* For purposes of determining whether a textile or apparel good meets the requirements of paragraph (a)(1) of this section, the provisions of § 102.21 of this chapter will apply.

The JFTA Act provides for “Rules of Origin” in Section 102 of the Act. Section 102(c) provides the specific rules for textile and apparel articles. Section 102(e) provides for the issuance of regulations by the Secretary of the Treasury as may be necessary to carry out Section 102. In House Report 107–176, Part 1, “United States-Jordan Free Trade Area Implementation Act”, dated July 31, 2001, the explanation of Section 102 includes the following with regard to the textile and apparel product rules of origin:

However, in addition, section 102 prescribes specific origin rules for textile and apparel products, **consistent with those set out in paragraph 9 of Annex 2.2 of the Agreement, and in section 334 of P.L. 103–465, the Uruguay Round Agreements Act (the so-called ‘Breux-Cardin’ rule.)** For apparel products, this rule means that the place of assembly will generally determine origin of the product. A textile product will be considered to originate where the fabric is knit or woven.

Emphasis added.

The House Report reflects that Congress viewed the textile and apparel rules of origin set forth in the JFTA Act and in the JFTA Agreement to be consistent with the rules set forth in section 334 of the Uruguay Round

Agreements Act, codified at 19 U.S.C. § 3592. The rules of section 334 are implemented in § 102.21 of the CBP Regulations. Those regulations were issued as a final rule, after public comment, on September 5, 1995 in the *Federal Register*. See 60 *Federal Register* 46188.

The textile and apparel rules of origin set forth in the JFTA and the JFTA Act are nearly verbatim to the same rules set forth in 19 U.S.C. § 3592. Therefore, the determination of whether a textile set or textile composite good is a “product of” Jordan for purposes of the JFTA should be consistent with that same result reached by the application of § 102.21.

The composite good at issue is classified in heading 6204, HTSUS and is produced from processing occurring in more than one country. As such, under § 102.21(c)(2), we look to the rule for goods of heading 6204 set forth in § 102.21(e). The applicable rule requires that if the good consists of two or more component parts that it undergo a change to an assembled good of heading 6204 from unassembled components provided the change is the result of the good being wholly assembled in a single country, territory or possession. “Wholly assembled” is defined in § 102.21(b)(6) as meaning:

that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory or insular possession. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as “wholly assembled” in a single country, territory, or insular possession.

Based on the information provided, the pants are “wholly assembled” in Jordan and therefore are a “product of” of Jordan.

In HQ 563246, dated July 7, 2005, a composite good consisting of a pair of shorts and a matching belt was determined to be a product of Jordan for purposes of the JFTA. The shorts determined the classification of the composite good and thus, the origin of the shorts which were cut and sewn in Jordan, determined the origin of the composite good. See HQ 960033, dated January 30, 1997, wherein the origin of a composite good consisting of a vest and belt was determined by the origin of the vest as it imparted the essential character of the good. (“Since the instant vest and belt are considered a composite good and the vest imparts the essential character of the composite good, the country of origin of the vest will determine the origin for the composite good and the country of origin of the belt will not be determined separately.”) See also, HQ 959342, dated July 18, 1996, wherein the origin of a dress and self-fabric belt was based on the origin of the dress as it imparted the essential character to the composite good. Similarly, in this case, the pants determine the classification of the composite good as they impart its essential character. Thus, as in HQ 563246, the origin of the accompanying belt which is joined to the pants in Jordan, is not relevant to the determination that the composite good is a product of Jordan.¹

¹ The determination of the origin of composite goods under 19 CFR § 102.21 contrasts with the determination of the origin of sets under that provision due to § 102.21(d) which specifically addresses the origin of sets containing textile goods and requires that the origin of each item in the set be separately determined.

Similarly, with regard to the eligibility of the subject pants and self-fabric belt under GN 3(a)(v) as a product of a QIZ, we apply the rules of origin set forth in 19 CFR § 102.21. As the processing in the QIZ is the same as the processing which would occur in Jordan, the result is the same. The country of origin of the composite good consisting of the pants and self-fabric belt is the QIZ.

We note that the reason cited for denying preferential treatment to the composite good in NY K80820 was Treasury Decision (T.D.) 91-7. This was an error. T.D. 91-7 set forth the position of the Customs Service with regard to the tariff treatment and country of origin marking of sets, mixtures and composite goods prior to the enactment of section 334 of the Uruguay Round Agreements Act which is codified at 19 U.S.C. § 3592, the statutory basis for 19 CFR § 102.21.

In HQ 559983, dated August 22, 1996, the Customs Service (now CBP) considered the marking of a dress and belt composite good. The composite good had been the subject of HQ 959342, dated July 18, 1996, which applied § 102.21 to determine the origin of the dress and belt to be the country in which the dress components were fully assembled, country B. In the ruling, we stated:

Since 19 CFR 102.21 implements section 334 of the Uruguay Round Agreements Act which applies 'for purposes of the customs laws,' and 19 U.S.C. 1304 is a Customs law, the country of origin of the dress and self-fabric belt for marking purposes is Country B. Therefore, only a single country of origin marking on the dress will be needed for the dress and belt composite good.

We noted in HQ 559983 that the decision reached therein was consistent with the "common sense" approach of T.D. 91-7 and that the analysis presented in that T.D. need not be used.

HOLDING:

Under scenarios B and D, the country of origin of the composite good consisting of the woven polyester pants with a self-fabric textile belt is either Jordan or the QIZ, *i.e.*, where the pants are wholly assembled. Provided that the 35 percent value added requirement is met, the pants and belt would qualify for preferential treatment under the JFTA or GN 3(a)(v). NY K80820 is hereby modified with respect to the matters addressed herein.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT F]

HQ H135361
 OT:RR:CTF:VS H135361 CMR
 CATEGORY: Classification

MS. REBECCA CHEUNG
 MACY'S MERCHANDISING GROUP
 11 PENN PLAZA
 NEW YORK, NY 10001

RE: Modification of New York Ruling Letters N013984 and N019427; eligibility of composite goods consisting of shorts with a belt and pants with a belt for preferential tariff treatment under General Note 3(a)(v) of the Harmonized Tariff Schedule of the United States (HTSUS)

DEAR MS. CHEUNG:

Customs and Border Protection (CBP) issued New York Ruling Letter (NY) N013984, dated July 17, 2007, and NY N019427, dated November 29, 2007, to you in response to your requests for rulings on the classification and eligibility for preferential tariff treatment of certain garments produced, in part, in a Qualifying Industrial Zone (QIZ). We have had occasion to review the decisions in NY N013984 and NY N019427 and have determined that they each contain an error with regard to the decision on the eligibility of goods produced under scenario A (concerning the sash and textile belt only) in each ruling. NY N013984 and NY N019427 are modified, accordingly, as set forth below.

FACTS:

As set forth in NY N013984 state in relevant part:

The submitted [boys'] shorts, style 1000, are constructed from 100 percent cotton yarn dyed fabric. The shorts have five belt loops, a front fly zipper, a button at the waistband that closes in the left-over-right direction, side entry pockets below the waist, two set-in rear welt pockets with button closures, expandable pant leg cargo pockets and hemmed leg openings. The shorts will be imported [into the U.S.] with a textile web belt. . . . The textile web belt . . [has a] metal D ring closures. . . .

You have indicated that the garments will be produced in Egypt in an approved "Qualifying Industrial Zone." The manufacturing operations for the shorts are done in accordance with one of the following scenarios, A, B and C:

Under scenarios A, B and C, the shorts were made from imported rolls of fabric by cutting and sewing in a QIZ in Egypt. The issue was the duty free treatment of the shorts with an accompanying belt. The scenarios were described in NY N013984, with regard to the textile web belt as follows:

SCENARIO A

- Belt wholly formed in China, imported into Egypt QIZ to be assembled with shorts for import into the U.S.

* * *

The facts provided in NY N019427, state in relevant part:

Style 3000 is a pair of women's pants constructed from 98 percent cotton and 2 percent spandex woven twill fabric. The pants have a flat waistband with five belt loops, a front zipper with a button and a hook and bar closure that fastens right over left and a woven textile sash belt threaded through the belt loops. The pants also feature two front pockets, two back pockets with a button closure and hemmed leg openings with a side slit.

Four manufacturing scenarios were presented in NY N019427. In all four scenarios the pants were cut and sewn in a QIZ in Egypt from foreign fabric. We are only concerned herein with scenario A described below:

SCENARIO A:

The sash belt is formed in China and shipped to the QIZ factory in Egypt. The sash belt is threaded through the pant belt loops. The pants and sash belt will be exported directly to the United States.

* * *

In NY N013984 and NY N019427, CBP classified the woven shorts with textile web belt (NY N013984) and the woven pants with sash belt (NY N019427) as composite goods with the garments imparting the essential character to the goods and thus determining the classification of the composite goods.

ISSUE:

Are the composite goods consisting of woven shorts with textile web belt (NY N013984) and woven pants with sash belt (NY N019427) which were the subject of NY N013984 and NY N019427, respectively, eligible for preferential treatment under GN 3(a)(v), HTSUS, as products of a QIZ?

LAW AND ANALYSIS:

Under GN 3(a)(v), HTSUS, articles which are the product of the West Bank, the Gaza Strip or a QIZ and which are imported directly to the United States from the West Bank, the Gaza Strip, a QIZ or Israel qualify for duty-free treatment, provided the sum of (1) the cost or value of materials produced in the West Bank, the Gaza Strip, QIZ, or Israel, plus (2) the direct costs of processing operations performed in the West Bank, the Gaza Strip, QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the U.S. An article is considered to be a "product of" the West Bank, the Gaza Strip, or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new or different article of commerce that has been grown, produced or manufactured in one of those areas.

With regard to the eligibility of the subject boys' shorts with textile belt and the subject women's pants with textile sash, we apply the rules of origin set forth in 19 CFR § 102.21 to determine whether these goods qualify as a product of a QIZ under GN 3(a)(v). The composite goods at issue are classified in headings 6203 (boys' shorts) and 6204 (women's pants) and are produced from processing occurring in more than one country. As such, under § 102.21(c)(2), we look to the rule set forth for goods of headings 6203 and 6204 set forth in section (e) of § 102.21. The applicable rule requires that if the good consists of two or more component parts that it undergo a change to an assembled good of the heading (6203 or 6204) from unassembled components

provided the change is the result of the good being wholly assembled in a single country, territory or possession. “Wholly assembled” is defined in § 102.21(b)(6) as meaning:

that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory or insular possession. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as “wholly assembled” in a single country, territory, or insular possession.

Based on the information provided, the boys’ shorts and the women’s pants are “wholly assembled” in a QIZ and therefore they are “products of” the QIZ.

In HQ 960033, dated January 30, 1997, the origin of a composite good consisting of a vest and belt was determined by the origin of the vest as it imparted the essential character of the good. (“Since the instant vest and belt are considered a composite good and the vest imparts the essential character of the composite good, the country of origin of the vest will determine the origin for the composite good and the country of origin of the belt will not be determined separately.”) *See also*, HQ 959342, dated July 18, 1996, wherein the origin of a dress and self-fabric belt was based on the origin of the dress as it imparted the essential character to the composite good. In HQ 563246, dated July 7, 2005, a composite good consisting of a pair of shorts and a matching belt was determined to be a product of Jordan for purposes of the JFTA. The shorts determined the classification of the composite good and thus, the origin of the shorts which were cut and sewn in Jordan, determined the origin of the composite good. Accordingly, with regard to the Chinese-origin textile belt, as the good at issue is classifiable as a composite good, the origin of the garment determines the origin of the composite good and thus whether the composite good is considered a “product of” the QIZ.¹

We note that the reason cited for denying preferential treatment to the composite good in NY K80820 was Treasury Decision (T.D.) 91–7. This was an error. T.D. 91–7 set forth the position of the Customs Service with regard to the tariff treatment and country of origin marking of sets, mixtures and composite goods prior to the enactment of section 334 of the Uruguay Round Agreements Act which is codified at 19 U.S.C. § 3592, the statutory basis for 19 CFR § 102.21.

In HQ 559983, dated August 22, 1996, the Customs Service (now CBP) considered the marking of a dress and belt composite good. The composite good had been the subject of HQ 959342, dated July 18, 1996, which applied § 102.21 to determine the origin of the dress and belt to be the country in which the dress components were fully assembled, country B. In the ruling, we stated:

Since 19 CFR 102.21 implements section 334 of the Uruguay Round Agreements Act which applies ‘for purposes of the customs laws,’ and 19 U.S.C. 1304 is a Customs law, the country of origin of the dress and

¹ The determination of the origin of composite goods under 19 CFR § 102.21 contrasts with the determination of the origin of sets under that provision due to § 102.21(d) which specifically addresses the origin of sets containing textile goods and requires that the origin of each item in the set be separately determined.

self-fabric belt for marking purposes is Country B. Therefore, only a single country of origin marking on the dress will be needed for the dress and belt composite good.

We noted in HQ 559983 that the decision reached therein was consistent with the “common sense” approach of T.D. 91–7 and that the analysis presented in that T.D. need not be used.

HOLDING:

Under scenario A in NY N013984 and under scenario A in NY N019427, the country of origin of the composite good consisting of woven boys’ shorts with textile web belt or woven women’s pants with textile sash belt, respectively, is the QIZ, *i.e.*, where the shorts or pants are wholly assembled. As such, the composite goods are “products of” the QIZ in which the shorts or pants are wholly assembled. Provided that the 35 percent value added requirement is met, the composite goods would qualify for preferential treatment under GN 3(a)(v). NY N013984 and NY N019427 are hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT G]

HQ H141201
OT:RR:CTF:VS H141201 CMR
CATEGORY: Classification

Ms. ANNETTE DIAMOND
LIZ CLAIBORNE INC.
2 CLAIBORNE AVENUE
HQ2 7/S
NORTH BERGEN, NJ 07047

RE: Modification of New York Ruling Letter N118184; eligibility of composite good consisting of pants with a belt for preferential tariff treatment under General Note 3(a)(v) of the Harmonized Tariff Schedule of the United States (HTSUS)

DEAR Ms. DIAMOND:

Customs and Border Protection (CBP) issued New York Ruling Letter (NY) N118184, dated August 24, 2010, to you in response to your request for a ruling on the classification and eligibility for preferential tariff treatment of a certain garment produced, in part, in a Qualifying Industrial Zone (QIZ). We have had occasion to review the decision in NY N118184. With respect to our denial of the composite good, consisting of the pants and a textile belt, for preferential tariff treatment as a product of a QIZ, we erred. NY N118184 is modified, accordingly, as set forth below.

FACTS:

As set forth in NY N118184 states in relevant part:

The submitted sample, Axxcess style AQMU6755, is a pair of women's pants with a textile belt. The pants are constructed from 98 percent cotton and 2 percent spandex woven fabric. The capri length pants have a flat waistband with five belt loops; a left over right fly opening with a zipper and button closure; two front pockets; one coin pocket; two back patch pockets with embroidery; and hemmed leg openings with a turned up cuff. As this garment has a left over right closure, the presumption is that the garment will be for men. However, it is clear based on the cut of the garment that it was designed for women. Therefore, the pants will be classified as a woman's garment. A woven textile belt with a buckle has been threaded through the belt loops. The belt is constructed from 100 percent polyester fabric.

You state the manufacturing operations for the pants and belts are as follows:

The Chinese fabric for the pants is shipped in rolls to the QIZ facility. The fabric is cut and assembled in the Egypt QIZ into pants. The textile belt will be made in China and shipped to the Egypt QIZ where it will be looped into the garment. The pants and textile belt will be exported directly to the United States.

The pants and textile belt were classified in NY N118184 as a composite good in heading 6204, Harmonized Tariff Schedule of the United States, based upon the pants imparting the essential character, and thus determining the classification, of the combination.

ISSUE:

Is the composite good consisting of the woven pants with a textile belt eligible for preferential treatment under GN 3(a)(v), HTSUS, as a product of a QIZ?

LAW AND ANALYSIS:

Under GN 3(a)(v), HTSUS, articles which are the product of the West Bank, the Gaza Strip or a QIZ and which are imported directly to the United States from the West Bank, the Gaza Strip, a QIZ or Israel qualify for duty-free treatment, provided the sum of (1) the cost or value of materials produced in the West Bank, the Gaza Strip, QIZ, or Israel, plus (2) the direct costs of processing operations performed in the West Bank, the Gaza Strip, QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the U.S. An article is considered to be a “product of” the West Bank, the Gaza Strip, or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new or different article of commerce that has been grown, produced or manufactured in one of those areas.

With regard to the eligibility of the subject women’s pants with textile belt, we apply the rules of origin set forth in 19 CFR § 102.21 to determine whether this good qualifies as a product of a QIZ under GN 3(a)(v). The composite good at issue is classified in heading 6204, HTSUS, and is produced from processing occurring in more than one country. As such, under § 102.21(c)(2), we look to the rule set forth for goods of heading 6204 set forth in section (e) of § 102.21. The applicable rule requires that if the good consists of two or more component parts that it undergo a change to an assembled good of heading 6204 from unassembled components provided the change is the result of the good being wholly assembled in a single country, territory or possession. “Wholly assembled” is defined in § 102.21(b)(6) as meaning:

that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory or insular possession. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as “wholly assembled” in a single country, territory, or insular possession.

Based on the information provided, the women’s pants are “wholly assembled” in the QIZ and therefore they are “products of” the QIZ.

In HQ 960033, dated January 30, 1997, the origin of a composite good consisting of a vest and belt was determined by the origin of the vest as it imparted the essential character of the good. (“Since the instant vest and belt are considered a composite good and the vest imparts the essential character of the composite good, the country of origin of the vest will determine the origin for the composite good and the country of origin of the belt will not be determined separately.”) *See also*, HQ 959342, dated July 18, 1996, wherein the origin of a dress and self-fabric belt was based on the origin of the dress as it imparted the essential character to the composite good. In HQ 563246, dated July 7, 2005, a composite good consisting of a pair of shorts and a matching belt was determined to be a product of Jordan for purposes of the JFTA. The shorts determined the classification of the composite good and

thus, the origin of the shorts which were cut and sewn in Jordan, determined the origin of the composite good. Accordingly, with regard to the Chinese-origin textile belt, as the good at issue is classifiable as a composite good, the origin of the garment determines the origin of the composite good and thus whether the composite good is considered a “product of” the QIZ.¹

We note that the reason cited for denying preferential treatment to the composite good in NY K80820 was Treasury Decision (T.D.) 91-7. This was an error. T.D. 91-7 set forth the position of the Customs Service with regard to the tariff treatment and country of origin marking of sets, mixtures and composite goods prior to the enactment of section 334 of the Uruguay Round Agreements Act which is codified at 19 U.S.C. § 3592, the statutory basis for 19 CFR § 102.21.

In HQ 559983, dated August 22, 1996, the Customs Service (now CBP) considered the marking of a dress and belt composite good. The composite good had been the subject of HQ 959342, dated July 18, 1996, which applied § 102.21 to determine the origin of the dress and belt to be the country in which the dress components were fully assembled, country B. In the ruling, we stated:

Since 19 CFR 102.21 implements section 334 of the Uruguay Round Agreements Act which applies ‘for purposes of the customs laws,’ and 19 U.S.C. 1304 is a Customs law, the country of origin of the dress and self-fabric belt for marking purposes is Country B. Therefore, only a single country of origin marking on the dress will be needed for the dress and belt composite good.

We noted in HQ 559983 that the decision reached therein was consistent with the “common sense” approach of T.D. 91-7 and that the analysis presented in that T.D. need not be used.

HOLDING:

The country of origin of the subject composite good consisting of women’s pants with a textile belt is the QIZ, *i.e.*, where the pants are wholly assembled. As such, the composite good is a “product of” the QIZ in which the pants are wholly assembled. Provided that the 35 percent value added requirement is met, the composite good would qualify for preferential treatment under GN 3(a)(v). NY N118184 is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

¹ The determination of the origin of composite goods under 19 CFR § 102.21 contrasts with the determination of the origin of sets under that provision due to § 102.21(d) which specifically addresses the origin of sets containing textile goods and requires that the origin of each item in the set be separately determined.

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF VODKA**

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

ACTION: Notice of proposed modification of two ruling letters and proposed revocation of treatment relating to tariff classification of vodka.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify two ruling letters relating to the tariff classification of vodka under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before June 24, 2011.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. - 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Greg Connor, Tariff Classification and Marking Branch: (202) 325–0025.

BACKGROUND

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP proposes to modify two ruling letters pertaining to the tariff classification of vodka. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) H099760, dated May 25, 2010 and New York Ruling Letter (NY) N064255, dated July 8, 2009, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action. In HQ H099760 and NY N064255, set forth respectively as Attachments A and B to this document, CBP determined that the subject merchandise was classified under heading 2207, HTSUS, and specifically under subheading 2207.10.30, HTSUS, which provides for: "[u]ndenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength: Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher: For beverage purposes". It is now CBP's position that the subject vodka is properly classified under heading 2208, HTSUS, and specifically under subheading 2208.60,

HTSUS, which provides for: “Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Vodka”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify HQ H099760 and NY N064255 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject vodka according to the classification analysis contained in proposed HQ H112716, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 29, 2011

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H099760

May 25, 2010

CLA-2 OT:RR:CTF:TCM H099760 JPJ

CATEGORY: Classification

TARIFF NO.: 2207.10.30

PAUL HEGLAND, ESQ.
ADDUCI, MASTRIANI, & SCHAUMBERG LLP
ATTORNEYS AT LAW
1200 SEVENTEENTH STREET, N.W.
WASHINGTON, DC 20036

RE: Classification and Country of Origin of Vodka

DEAR MR. HEGLAND:

This is in response to your request on behalf of your client concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) and country of origin of vodka.

FACTS:

The merchandise at issue is vodka produced in Sweden from ethyl alcohol followed by fermentation with yeast of cereals. The vodka will be imported in bulk and contains 96% alcohol/volume.

In the United States, the vodka will be diluted to 40% alcohol/volume for standard vodka and it will be diluted similarly for flavored vodkas, and in the case of the latter, flavorings and/or sweeteners will be added. The diluted and/or flavored product will be bottled in accordance with the rules and regulations of the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury, and the bottles will be labeled in accordance with those same requirements. The labels will state, in addition to other TTB labeling requirements, the country of origin of the vodka, i.e., "Product of Sweden".

ISSUE:

I. Whether the vodka is classified in heading 2207, HTSUS, as undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher, or heading 2208, HTSUS, as undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.

II. Whether the dilution and/or addition of flavorings and/or sweeteners subsequent to importation constitutes a substantial transformation for country of origin purposes.

LAW AND ANALYSIS:**I. Classification**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

2207 Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength:

2208 Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liquers and other spirituous beverages:

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The Explanatory Notes to heading 2208, HTSUS, state, in relevant part, that the heading "covers, whatever their alcoholic strength...spirits produced by distilling...fermented beverages or fermented grain or other vegetable products...without adding flavouring" and, "[p]rovided that their alcoholic strength by volume is less than 80...[percent by volume]...undenatured spirits (ethyl alcohol...) which...are characterised by the absence of secondary constituents giving a flavour or aroma." The EN also states that the heading does not include, in relevant part, (b) . . . undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher (**heading 22.07**).

"Spirits," as discussed in the above-mentioned Explanatory Notes, is "the liquid containing ethyl alcohol and water that is distilled from an alcoholic liquid or mash." See *Webster's Ninth New Collegiate Dictionary* (1989).

The Explanatory Notes to heading 2207, HTSUS, state, in part, that "[e]thyl alcohol is the alcohol which occurs in...alcoholic beverages...[and]...is obtained either by fermentation of certain kinds of sugar by means of yeast or other ferments and subsequent distillation...[whereas]...ethyl alcohol and other spirits, denatured, are spirits mixed with substances to render them unfit for drinking but not to prevent their use for industrial purposes."

The merchandise, as imported, contains 96% alcohol/volume. It is only after importation that it will be diluted to 40% alcohol/volume for standard vodka. Therefore, the merchandise is described by heading 2207, HTSUS, because it is ethyl alcohol of a strength of 96% alcohol/vol from the fermentation with yeast of cereals as described by the EN to heading 2207, HTSUS.

II. Country of Origin

Regarding country of origin, 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 imported into the U.S. 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 U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such

marking should influence his will.” *United States v. Friedlaender & Co. Inc.*, 27 CCPA 297, 302, C.A.D. 104 (1940).

Part 134, CBP Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. §1304. Section 134.1(b), CBP Regulations (19 C.F.R. §134.1(b)), defines “country of origin” as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of the marking laws and regulations. An article used in manufacture which results in an article having a name, character, or use differing from that of the constituent article will be considered substantially transformed. *United States v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98)(1940).

In the case under consideration, we must consider what effect, if any, the dilution and/or the addition of flavorings and/or sweeteners that occur after importation have on the country of origin determination.

We believe that the Court of International Trade’s (CIT) analysis in *National Juice Products Ass’n v. United States*, 10 CIT 48, 628 F. Supp. 978 (1986), is applicable to this case. In *National Juice*, the CIT upheld CBP’s decision in HQ 728557, dated September 4, 1985, in which we held that imported orange juice concentrate was not substantially transformed when it was mixed with water, essential oils, flavoring ingredients and domestic fresh juice in order to produce frozen concentrated orange juice and reconstituted orange juice. CBP found that the manufacturing process did not create an article with a new name, character or use. CBP held, and the CIT agreed, that the manufacturing process did not change the “fundamental character of the product” as “it was still essentially the juice of oranges.” *See also* HQ 562468, dated October 4, 2002.

In the instant case, as the processes that occur after importation constitutes mere dilution and/or the addition of flavorings and/or sweeteners, the fundamental character of the product is not altered, and the vodka has not been substantially transformed. The vodka has not been converted into a different article of commerce with a new name, character or use. Therefore, the imported vodka remains a product of Sweden for country of origin marking purposes. *See* NY N064255, dated July 8, 2009.

HOLDING:

In accordance with GRI I, the vodka containing 96% alcohol/volume is classified in heading 2207, HTSUS. It is specifically provided for in subheading 2207.10.3000, HTSUS as: “Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength: Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher: For beverage purposes”. The 2010 general, column one rate of duty is 18.9¢/pf.liter. In addition, imports under this heading may be subject to Federal Excise Tax (26 U.S.C. 5001, 26 U.S.C. 5041 or 26 U.S.C. 5051).

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

The imported vodka is not substantially transformed as a result of the dilution and/or the addition of flavorings and/or sweeteners that occur after importation. Therefore, the imported vodka remains a product of "Sweden" for purposes of compliance with 19 U.S.C. §1304.

Sincerely,

GAIL A. HAMILL,

Chief

Tariff Classification and Marking Branch

[ATTACHMENT B]

N064255

July 8, 2009

CLA-2-22:OT:RR:NC:232

CATEGORY: Classification

TARIFF NO.: 2207.10.3000; 2208.60.5000

MR. DAVID J. DOYLE
HIRAM WALKER & SON'S LTD.
2072 RIVERSIDE DR. EAST
WINDSOR ONTARIO
N8Y 4S5 CANADA

RE: The tariff classification, marking and country of origin of Flavored Vodka from Denmark

DEAR MR. DOYLE:

In your letter dated June 9, 2009, you requested a ruling on tariff classification and country of origin of Flavored Vodka from Denmark. Your request also asks for the marking requirements for these products.

The subject merchandise consists of flavored vodka bottled in the United States. You suggest two scenarios for potential production of these products asking for advice on each one.

Scenario 1: Vodka is produced in Denmark and then imported into the United States. You state that the strength of the vodka at the time of importation will be equal to or greater than 80 percent by volume. The vodka will be diluted with water, sugar and flavor to produce a Flavored Vodka product in the United States. The final product will be a Flavored Vodka with 35 percent alcohol by volume.

Scenario 2: Vodka is produced in Denmark and then imported into the United States. You state that the strength of the vodka at the time of importation will be less than 80 percent by volume. The vodka will be diluted with water, sugar and flavor to produce a Flavored Vodka product in the United States. The final product will be a Flavored Vodka with 35 percent alcohol by volume.

The applicable subheading for the Flavored Vodka presented in Scenario 1 will be 2207.10.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher: for beverage purposes. The duty rate will be 18.9 cents per proof liter. In addition, the ethyl alcohol may be subject to a Federal Excise Tax of 13.50 per proof gallon and a proportionate tax rate on all fractional parts of a proof gallon.

The applicable subheading for the Flavored Vodka presented in Scenario 2 will be 2208.60.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for vodka . . . in containers each holding over 4 liters . . . valued over \$2.05 per liter. The rate of duty will be free. In addition, the vodka is subject to a Federal Excise Tax of \$13.50 per proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.

Your inquiry also requests a ruling on the country of origin determination for an alcoholic beverage for the purpose of label marking.

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.

The country of origin for marking purposes is defined at section 19 CFR 134.1(b), to mean the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of Part 134. A substantial transformation is effected when a manufacturer or processor converts or combines an article into a new and different article resulting in a change in name, character, or use.

In this case, we must first determine if the product undergoes a substantial transformation. We must consider what effect, if any, the dilution with water in the United States and the addition of sugar and flavor from the United States, Canada and other various countries has on the vodka. HQ ruling 562642, dated April 14, 2003, in which we held that dilution and bottling of vodka, do not render a substantial transformation. We believe that the Court of International Trade’s (CIT) analysis in *National Juice Products Ass’n v. United States*, 10 CIT 48, 628 F. Supp. 978 (1986), is also applicable to this case. In *National Juice*, the CIT upheld Customs ruling in HRL 728557, dated September 4, 1985, in which we held that imported orange juice concentrate was not substantially transformed when it was mixed with water, essential oils, flavoring ingredients and domestic fresh juice in order to produce frozen concentrated orange juice and reconstituted orange juice. Customs found that the manufacturing process did not create an article with a new name, character or use. Customs held, and the CIT agreed, that the manufacturing process did not change the “fundamental character of the product” as “it was still essentially the juice of oranges.”

In both scenarios, the imported vodka has not been substantially transformed as a result of the dilution and addition of sugar from the United States, Canada or other various countries and flavor added in the United States to produce flavored vodka. The imported vodka remains a product of “Denmark” for country of origin marking.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at (646) 733-3031.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H112716

CLA-2 OT:RR:CTF:TCMH112716 GC**CATEGORY:** Classification**TARIFF NO.:** 2208.60

MR. MUNFORD PAGE HALL, II, ESQ.
 ADDUCI, MASTRIANI & SCHAUMBERG, LLP
 1200 SEVENTEENTH STREET, NW
 WASHINGTON, DC 20036

RE: Modification of HQ H099760 and NY N064255; classification of vodka

DEAR MR. HALL:

This is in response to your letter, dated June 16, 2010, requesting reconsideration of Headquarters Ruling Letter (HQ) H099760, dated May 25, 2010, which pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) and country of origin of vodka. You request reconsideration of HQ H099760 only with respect to the tariff classification of the vodka. We have since reviewed HQ H099760 along with New York Ruling Letter (NY) N064255, dated July 8, 2009, which pertains to the classification of a similar product.¹ We find both rulings to be in error.

FACTS:

The vodka subject to HQ H099760 is produced in Sweden from ethyl alcohol followed by fermentation with yeast of cereals. The vodka is imported in bulk and contains 96% alcohol/volume. In HQ H099760, the instant vodka was found to be classified under subheading 2207.10.30, HTSUS, which provides for: “[u]ndenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength: Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher: For beverage purposes”.

In addition to the above information, you informed us in an e-mail submission, dated January 24, 2010, that the instant vodka is the product of at least five distillations as well as charcoal filtration, which removes virtually all of the alcohol’s secondary constituents. As a consequence, the subject merchandise possesses the distinctive characteristics of vodka inasmuch as it has no color, taste, or aroma.

As imported, the subject vodka is fit for human consumption. Related to that, you noted in your reconsideration request that equivalent products (i.e. vodka that is 96% alcohol by volume) are sold commercially as vodka in Europe and in the United States. You also noted that the subject merchandise satisfies the definition of “vodka” set forth in regulations of the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury (“TTB”) and the European Union.²

¹ In NY N064255, the subject vodka, as described in “scenario 1” was to be imported at a strength greater to or equal to 80 percent alcohol by volume. After importation, it would be diluted with water, sugar and flavor to produce a flavored-vodka of 35 percent alcohol by volume.

² Section 5.22, TTB Regulations (27 C.F.R. §5.22) sets forth the standards of identity for labeling and advertising of several classes and types of distilled spirits, and EC Regulation 110–2008 pertains to the definition, description, presentation, labeling and protection of geographical indications of spirit drinks.

ISSUE:

Whether the instant vodka is properly classified under heading 2207, HTSUS, as undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher, or heading 2208, HTSUS, as a spirit?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. The HTSUS provisions under consideration in this case are as follows:

2207 Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength:

* * *

2208 Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages:

At the outset, we note that heading 2207, HTSUS, and heading 2208, HTSUS, are both divided by a semicolon. Accordingly, in this instance, the subject merchandise falls under the scope of either the provision for “undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher” (heading 2207, HTSUS), or “spirits, liqueurs and other spirituous beverages” (heading 2208, HTSUS).

In HQ H099760, we noted that the instant vodka would be diluted to 40 percent alcohol by volume after importation, and therefore was described by heading 2207, HTSUS, because it is ethyl alcohol of a strength of 96 percent alcohol by volume at the time of importation.

This conclusion overlooks the fact that the scope of the provision for “spirits, liqueurs and other spirituous beverages” of heading 2208, HTSUS, is not limited to certain products of a certain alcoholic strength by volume. Accordingly, it must be determined whether the instant merchandise falls under the scope of the *eo nomine* provision for “spirits”.

When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576. The Oxford English Dictionary defines “spirit”, in pertinent part, as follows:

21. a. A liquid of the nature of an essence or extract from some substance, esp. one obtained by distillation. . .

- b. Without article: Liquid such as is obtained by distillation, *spec.* that which is of an alcoholic nature. . .
- c. orig. *pl.* Strong alcoholic liquor for drinking, obtained from various substances by distillation; *sing.* any particular kind of this. . .

We note that that the instant merchandise meets this definition for “spirits”. Particularly with respect to the scope of heading 2208, HTSUS, the subject merchandise is a strong alcoholic liquor for drinking obtained by distillation. The fact that it is suitable for consumption and substantially identical to varieties of vodka commercially available at 96 percent alcohol percent by volume serves as evidence that the instant vodka is recognizable as such. Based on the foregoing, we find that the product falls under the scope of the phrase “spirits, liqueurs and other spirituous beverages”, and is thus *prima facie* classifiable under heading 2208, HTSUS.³

This finding is supported by the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to heading 22.08. The ENs constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Regarding the scope of “spirits, liqueurs and other spirituous beverages” of heading 2208, HTSUS, EN 22.08 provides a list of finished products that meet the terms of the heading. In so doing, EN 22.08 states, in pertinent part:

In addition to undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol, the heading includes, *inter alia* :

* * *

- (5) Vodka obtained by distilling fermented mach of agricultural origin (e.g., cereals, potatoes) and sometimes treated with activated charcoal or carbon.

(Emphasis in original)

While it may be the case that spirits of heading 2208, HTSUS, are typically of an alcoholic strength of less than 80 percent by volume, this is not a requirement imposed by the legal text. Moreover, the fact that vodka is listed in EN 22.08 among the examples of spirits, liqueurs and other spirituous beverages covered by the heading in addition to those of an alcoholic strength by volume of less than 80 percent indicates that the heading covers beverages of a greater alcoholic content.

However, we note that the instant vodka is also described by heading 2207, HTSUS, which provides for, in pertinent part, “undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher”. EN 22.07

³ We note that the above referenced TTB and European Union regulations pertain to labeling and advertising of alcoholic products, not as guidance for classification of imported merchandise. Accordingly, they have limited utility with respect to the analysis of the scopes of headings 2207 and 2208, HTSUS. See *Amersham Corp. v. United States*, 5 C.I.T. 49, 56, 564 F.Supp. 813, 817 (1983) (Noting that “statutes, regulations and administrative interpretations relating to ‘other than tariff purposes’ are not determinative of [CBP] classification disputes.”).

provides, in pertinent part, that heading 2207, HTSUS, “...covers **neutral spirits**, i.e., ethyl alcohol containing water from which the secondary constituents... present in the first distillate have been almost completely removed by fractional distillation.” (Emphasis in original).

Ethyl alcohol, also referred to as ethanol, is defined in Merriam-Webster Collegiate Dictionary Online (2011), in pertinent part, as “a colorless...liquid that is the intoxicating agent in liquors and is also used as a solvent and in fuel”. Considering the fact that the instant merchandise is solely the result of multiple distillations of yeast with cereals along with charcoal filtration, it constitutes ethyl alcohol. In this regard, vodka is unique among spirits inasmuch as it is neutral, meaning that it contains no secondary constituents that provide flavor or aroma as a result of multiple distillations and charcoal filtration. See also EN 22.07, *supra*. The pertinent definition of the word “denature” in the Oxford English Dictionary is “[t]o alter (anything) so as to change its nature; e.g. to render alcohol... unfit for consumption”. As noted above, the subject vodka is fit for human consumption and is thus “undenatured”. Accordingly, vodka is undenatured ethyl alcohol. The fact that the subject merchandise is imported at an alcoholic strength by volume of 96 percent vol. means that it is *prima facie* classifiable under heading 2207, HTSUS.

Because the instant merchandise is *prima facie* classifiable under two HTSUS headings, GRI 3 applies. It provides, in pertinent part, as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

GRI 3(a) is known as the “rule of relative specificity.” See *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998) (*Orlando Food*). Where articles can be classified under two HTSUS headings, under GRI 3(a) the classification “turns on which of these two provisions are more specific.” *Orlando Food*, 140 F.3d at 1441. Courts undertaking the GRI 3(a) comparison “look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty.” *Faus Group, Inc. v. United States*, 581 F.3d 1369 (Fed. Cir. 2009) (quoting *Orlando Food*, 140 F.3d at 1441).

In this particular case, it is more difficult to satisfy the provision for “spirits, liqueurs and other spirituous beverages” than the provision for “[u]ndenatured ethyl alcohol of an alcoholic strength by volume of 80 percent or higher”, as spirits are a finished commercial product and undenatured ethyl alcohol is a mere raw material used in the creation of spirits and for other industrial purposes. While vodka’s status as a “neutral spirit” places it under the scope of heading 2207, HTSUS, not all ethyl alcohol of heading 2207, HTSUS, meets the terms of heading 2208, HTSUS, as spirits, liqueurs

and other spirituous beverages. The instant product has been distilled five times and subjected to charcoal filtration. It is also indistinguishable from products sold and consumed as vodka. Accordingly, the instant product is a spirit, liqueur or other spirituous beverage of heading 2208, HTSUS.

HOLDING:

By application of GRI 3(a), the subject vodka is classified under heading 2208, HTSUS, and is specifically provided for under subheading 2208.60, HTSUS, as: "Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Vodka". Classification beyond the six-digit level is determined by the capacity of the container in which the vodka is imported. The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

HQ H099760, dated May 25, 2010, and NY N064255, dated July 8, 2009, are hereby MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF DIASORIN
DYNABEADS M-450 TOSYLACTIVATED AND M-280
TOSYLACTIVATED**

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

ACTION: Notice of proposed modification of a ruling letter and proposed modification of treatment relating to tariff classification of Diasorin Dynabeads M-450 Tosylactivated and M-280 Tosylactivated.

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

DATES: Comments must be received on or before June 24, 2011.

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

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325-0195

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the tariff classification of Diasorin Dynabeads M-450 Tosylactivated and M-280 Tosylactivated. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) 860953, dated March 38, 1991 (Attachment A), this notice covers any rulings on this merchan-

dise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY 860953, CBP determined that the Diasorin Dynabeads M-450 Tosylactivated and M-280 Tosylactivated were classified in heading 3903, HTSUS, specifically under subheading 3903.19.00, HTSUS, which provides for "Polymers of styrene, in primary forms: Polystyrene: Other". It is now CBP's position that the subject merchandise is properly classified in heading 3822, HTSUS, specifically in subheading 3822.00.50, HTSUS, which provides for "Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials: Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006: Other".

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY 860953, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the Diasorin Dynabeads M-450 Tosylactivated and M-280 Tosylactivated according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H129336, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 3, 2011

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY 860953

MAR 28 1991

CLA-2-30:S:N:N1:238 860953

CATEGORY: Classification

TARIFF NO.: 3002.10.0050, 3903.19.0000

MR. GREGORY BLYSKAL
DYNAL, INC.
475 NORTHERN BLVD.
GREAT NECK, NY 11021

RE: The tariff classification of Dynabeads M-450 and M-280 from Norway.

DEAR MR. BLYSKAL:

In your letter dated February 22, 1991 you requested a tariff classification ruling.

The beads (both the M-450 and M-280) are polystyrene spheres that contain an iron oxide salt. The polystyrene bead acts as a solid phase for the attachment of antibodies. There are two groups of products as follows:

Group I types are uncoated beads which allow researchers to attach an antibody of their choice directly onto the bead:

- Dynabeads M-450 uncoated
- Dynabeads M-450 Tosylactivated
- Dynabeads M-280 Tosylactivated

Group II types are beads coated with either secondary or primary monoclonal antibodies for specific blood fraction isolation:

- Dynabeads M-450 Sheep anti-mouse
- Dynabeads M-450 Goat anti-mouse
- Dynabeads M-450 Sheep anti-rat
- Dynabeads M-450 Pan-T
- Dynabeads M-450 Pan-B
- Dynabeads M-450 CD4
- Dynabeads M-450 CD8
- Dynabeads M-280 Sheep-anti-rabbit

The applicable subheading for the Group I Dynabeads will be 3903.19.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Polystyrene, other in primary form. The rate of duty will be 0.9 cents per kilo plus 9.2 percent ad valorem.

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 402 M Street, S.W., Washington, D.C. 20460, telephone number (800) 424-9086.

The applicable subheading for the Group II Dynabeads will be 3002.10.0050, HTS, which provides for other antisera and blood fractions. The rate of duty will be free.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT B]

HQ H129336
CLA-2 OT:RR:CTF:TCMH129336 AMM
CATEGORY:Classification
TARIFF NO.:3822.00.50

MR. GREGORY BLYSKAL
 DYNAL, INC.
 475 NORTHERN BLVD.
 GREAT NECK, NY 11021

RE: Modification of New York Ruling Letter 860953; Tariff Classification of Diasorin Dynabeads M-450 Tosylactivated and Dynabeads M-280 Tosylactivated products

DEAR MR. BLYSKAL,

This is in regard to New York Ruling Letter (NY) 860953, issued to Dynal, Inc. (Dynal), dated March 38, 1991, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of Dynabeads M-450 Tosylactivated (M-450 TOS) and Dynabeads M-280 Tosylactivated (M-280 TOS) products. Customs and Border Protection (CBP) classified the above-identified products under heading 3903, HTSUS, which provides for "Polymers of styrene, in primary forms". We have reviewed NY 860953 and found it to be incorrect. For the reasons set forth below, we propose to modify that ruling.

FACTS:

In NY 860953, CBP described the products in the following manner:

The beads (both the M-450 and M-280) are polystyrene spheres that contain an iron oxide salt. The polystyrene bead acts as a solid phase for the attachment of antibodies. There are two groups of products as follows:

Group I types are uncoated beads which allow researchers to attach an antibody of their choice directly onto the bead: Dynabeads M-450 uncoated Dynabeads M-450 Tosylactivated Dynabeads M-280 Tosylactivated

* * *

In NY 860953, CBP classified in heading 3903, HTSUS, specifically under subheading 3903.19.00, HTSUS, which provides for "Polymers of styrene, in primary forms: Polystyrene: Other".

According to the product manual provided at <[http://tools.invitrogen.com/content/sfs/manuals/140_13.Dynabeads_M-450_Tocylactivated\(rev002\).pdf](http://tools.invitrogen.com/content/sfs/manuals/140_13.Dynabeads_M-450_Tocylactivated(rev002).pdf)>, the M-450 TOS product is described in the following manner:

1.1 Intended Use

Dynabeads M-450 Tosylactivated coupled with antibodies or other ligands provide a versatile tool for isolation of both cells and non-cell targets (e.g. proteins and other biomolecules). Their size makes them particularly suitable for stimulation and expansion of e.g. T cells (2,3,4,7). Cells can be directly isolated from any sample such as whole blood, bone marrow, mononuclear cell suspensions (MNC) or tissue digests.

* * *

1.2 Principle of Coupling

Dynabeads M-450 Tosylactivated provide reactive sulphonyl esters that can react covalently with proteins (e.g. antibodies) or other ligands containing primary amino or sulphhydryl groups. No further activation is necessary. Dynabeads M-450 Tosylactivated will bind proteins physically and chemically with an increasing number of covalent bonds with higher temperature and pH.

* * *

1.4 Description of Materials

Dynabeads M-450 Tosylactivated are uniform, superparamagnetic polystyrene beads (4.5 µm diameter) with a surface suitable for physical and chemical binding of antibodies and other biomolecules.

* * *

4. GENERAL INFORMATION

* * *

Warning And Limitations

This product is for research use only. Not intended for any animal or human therapeutic or diagnostic use unless otherwise stated.

* * *

According to the product manual provided at <<http://tools.invitrogen.com/content/sfs/manuals/142.03.04rev009.pdf>>, the M-280 TOS product has a similar construction, except that the beads are smaller (2.8 µm diameter instead of 4.5 µm). In addition, the M-280 TOS product is recommended for Target Protein Isolation procedures and Immunoassay procedures, rather than Cell Isolation.

ISSUE:

What is the proper classification of the Dynabeads M-280 Tosylactivated and Dynabeads M-450 Tosylactivated products?

LAW AND ANALYSIS:

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

The 2011 HTSUS provisions at issue are as follows:

| | |
|------|--|
| 3822 | Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials: |
|------|--|

| | |
|------------|--|
| | Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006: |
| 3822.00.50 | Other |
| ----- | |
| 3903 | Polymers of styrene, in primary forms: |
| | Polystyrene |
| 3903.19.00 | Other |
| ----- | |

Note 2(k) to Chapter 39, HTSUS, states, in pertinent part: “This chapter does not cover: . . . (k) Diagnostic or laboratory reagents on a backing of plastics (heading 3822); . . .”.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 38.22 states, in pertinent part:

* * *

Prepared laboratory reagents include not only diagnostic reagents, but also other analytical reagents used for purposes other than detection or diagnosis. Prepared diagnostic and laboratory reagents may be used in medical, veterinary, scientific or industrial laboratories, in hospitals, in industry, in the field or, in some cases, in the home.

* * *

The instant merchandise, as imported, consists of three layers. The first two layers are a manufactured “bead,” which has a core of iron oxide salt encapsulated by a polystyrene polymer. The beads are manufactured in a special process, giving them two important characteristics. First, all the beads are the same size. This is a function of the emulsification process of the polystyrene polymerizing process. Second, the beads are magnetic. This is a function of the added iron oxide salt. These beads functions as the “backing.” The beads are then coated with a third layer, which is a polyurethane polymer. Finally, the hydroxyl groups of the polyurethane polymer are reacted with p-toluenesulfonyl chloride, which attaches sulfonyl ester groups to the hydroxyl groups of the polyurethane.

M-450-TOS is used in Cell Isolation procedures. M-280 TOS is used in Protein Purification and Immunoassay procedures. All of these procedures use a ligand (such as an antibody, protein, peptide, or glycoprotein) to isolate and separate a target molecule. However, the instant merchandise, as imported, cannot be used for either procedure. The end user must employ the Ligand Coupling Protocol as outlined in the product manuals. *See* <[http://tools.invitrogen.com/content/sfs/manuals/140_13.Dynabeads M-450 Tocylactivated\(rev002\).pdf](http://tools.invitrogen.com/content/sfs/manuals/140_13.Dynabeads_M-450_Tocylactivated(rev002).pdf)>, Section 2.2; <<http://tools.invitrogen.com/>

content/sfs/manuals/142.03.04rev009.pdf>, Section 2.2. This process is a chemical reaction which removes the sulfonyl ester groups from the polyurethane layer and replaces them with the ligand chosen by the end user. Once this procedure is complete, the user has a new chemical substance which can be used for some other purpose, be it Cell Isolation, Protein Purification or Immunoassays.

A reagent is “a substance employed as a test to determine the presence of some other substance by means of the *reaction* which is produced. Now, any substance employed in chemical reactions.” *The Compact Oxford English Dictionary*, Second Edition (p. 271, 1991). Such substances are also called reactants. A reactant is defined as “a substance that is consumed in the course of a chemical reaction. It is sometimes known, especially in the older literature, as a reagent, but this term is better used in a more specialized sense as a test substance that is added to a system in order to bring about a reaction or to *see* whether a reaction occurs (e.g. an analytical reagent).” *Compendium of Chemical Terminology, IUPAC Recommendations*, Second Edition. (p. 342, 1997).

Typically, a reagent is mixed with another chemical, reacts with it, and is consumed in that reaction, creating a different set of chemicals. For instance, silver nitrate is a reagent used for the detection of certain halide ions (chloride, iodide, bromide), particularly for chloride. When clear silver nitrate and sodium chloride solutions are combined, the silver and chloride ions react with one another to form a silver chloride solid precipitate and a solution of sodium nitrate. Hence, the addition of silver nitrate to a clear sodium chloride solution allows one to detect the presence of chloride in the solution, because the white silver chloride precipitate could not have formed without its presence.

The instant merchandise meets the definition of “reagent.” Both are mixed with another chemical, specifically, the chosen ligand and buffer solutions. A chemical reaction occurs, wherein the sulfonyl ester groups attached to the polyurethane polymer are removed and replaced with the chosen ligand. The chemical composition of the polyurethane layer is changed. The reaction creates a different set of chemicals, usable for a new purpose. Therefore, the M-450 TOS and M-280 TOS products are properly classified under heading 3822, HTSUS, as “... prepared ... laboratory reagents, whether or not on a backing . . .”.

In Headquarters Ruling (HQ) 967094, dated May 11, 2006, CBP considered HyperD® products similar to the instant merchandise. The HyperD® products are composite materials in bead form consisting of a co-polymeric crosslinked network (hydrogel) distributed inside the pores of a rigid, mineral (mixture of sintered zirconium and calcium silicates) “ceramic” support (substrate). The substrate acts as a solid skeleton, while the hydrogel polymer governs the exchange mechanism for macromolecule or particle adsorption. The polymer provides a tridimensional network for the capture of separated molecules. Affinity ligands are chemically attached to the hydrogel polymers at one end, leaving the other end free to react with the targeted substance to form a complex or coordination compound with that substance. CBP considered whether these products were a “reagent” within the definition of heading 3822, HTSUS.

Separation media are not involved in such a reaction. Although separation media may contribute to the analysis of mixtures by separating them into their constituent parts, there is no chemical reaction that consumes the “reagent.” Rather, the HyperD® products are used in “adsorption chromatography,” the “separation of a chemical mixture (gas or liquid) by passing it over an adsorbent bed which adsorbs different compounds at different rates.” “Adsorption” is defined as “the surface retention of solid, liquid, or gas molecules, atoms, or ions by a solid or liquid . . .” *McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Ed.*, Parker, Sybil P., ed. (1994, p. 38). While the EN’s specifically include a seemingly broad spectrum of reagents, including “other analytical reagents used for purposes other than detection or diagnosis,” separation media cannot be considered a reagent, analytical or otherwise, as explained above.

New York Ruling (NY) 863359, dated May 24, 1991, considered four similar products, namely Dynabeads M-280 streptavidin, Dynabeads Oligo (dt)25, Dynabeads Template preparation kit and Dynabeads mRNA. All of these products use the same superparamagnetized polystyrene bead as the instant merchandise. However, they use a different coating. The Dynabeads M-280 streptavidin product is a bead coated with streptavidin, which is a protein used to capture biotin from a sample. This product is ready to use for numerous applications, including purification of proteins and nucleic acids, protein interaction studies, immunoprecipitation, immunoassays, phage display, biopanning, drug screening and cell isolation. The Dynabeads Oligo (dt) 25 product is a bead coated with oligonucleotides, which is a nucleic acid used to capture intact mRNA from a sample. The product is ready to use for the rapid isolation of highly purified, intact mRNA from eukaryotic total RNA or directly from crude extracts of cells, animal and plant tissues. The Dynabeads Template preparation kit is a package containing Dynabeads M-280 streptavidin and several buffer solutions. The Dynabeads mRNA purification kit is a package containing Dynabeads Oligo (dt)25 and several buffer solutions. CBP classified these products under heading 3822, HTSUS, as reagents.

Chapter 39, HTSUS, does not cover laboratory reagents on a backing of plastics. *See* Note 2(k) to Chapter 39, HTSUS. As described above, the instant merchandise is a prepared laboratory reagent. In addition, it is on a backing of plastics, in the form of a polystyrene and polyurethane superparamagnetic bead. Therefore, the M-450 TOS and M-280 TOS products are precluded from classification under heading 3903, HTSUS.

HOLDING:

By application of GRI 1, the Dynabeads M-450 and Dynabeads M-280 Tosylactivated products are properly classified under heading 3822, HTSUS, specifically under subheading 3822.00.50, HTSUS, which provides for “Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials: Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006: Other”.

The general, column one duty rate is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

NY 860953, dated March 28, 1991, is hereby MODIFIED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Declaration of Unaccompanied Articles**

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651-0030.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration of Unaccompanied Articles (CBP Form 255). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 11254) on March 1, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 9, 2011.

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

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

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

Title: Declaration of Unaccompanied Articles

OMB Number: 1651–0030

Form Number: CBP Form 255

Abstract: CBP Form 255 is completed by travelers arriving in the United States with a parcel or container which is to be sent from an insular possession at a later date. It is the only means whereby the CBP officer, when the person arrives, can apply the exemptions or 5 percent flat rate of duty to all of the traveler's purchases.

A person purchasing articles in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States receives a sales slip, invoice, or other evidence of purchase which is presented to the CBP officer along with his CBP Form 255, which is prepared in triplicate. The CBP officer verifies the information, indicates on the form whether the article or articles were free of duty, or dutiable at the flat rate and validates the form. Two copies of the form are returned to the traveler, who sends one form to the vendor. Upon receipt of the form the vendor places it in an envelope, affixed to the outside of the package, and clearly marks the package "Unaccompanied Tourist Shipment," and sends the package to the traveler, generally via mail, although it could be sent by other

means. If sent through the mail, the package would be examined by CBP and forwarded to the Postal Service for delivery. Any duties due would be collected by the mail carrier. If the shipment arrives by means other than through the mail, the traveler would be notified by the carrier when the article arrives. Entry would be made by the carrier or the traveler at the customhouse. Any duties due would be collected at that time.

CBP Form 255 is authorized by Sections 202 & 203 of Public Law 95-410 and provided for 19 CFR 148.110, 148.113, 148.114, 148.115 and 148.116. A sample of this form may be viewed at http://forms.cbp.gov/pdf/CBP_Form_255.pdf.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals

Estimated Number of Respondents: 7,500

Estimated Number of Responses: 15,000

Estimated Time per Response: 5 minutes

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

Dated: May 4, 2011

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

[Published in the Federal Register, May 10, 2011 (76 FR 27079)]



AGENCY INFORMATION COLLECTION ACTIVITIES: Harbor Maintenance Fee

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

ACTION: 60-Day Notice and request for comments; Extension and revision of an existing collection of information: 1651-0055.

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 con-

cerning the Harbor Maintenance Fee (CBP Forms 349 and 350). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13).

DATES: Written comments should be received on or before July 5, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW, 5th Floor, Washington, DC. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW, 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13). 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: Harbor Maintenance Fee

OMB Number: 1651–0055

Form Number: CBP Forms 349 and 350

Abstract: The Harbor Maintenance Fee (HMF) and Trust Fund is used for the operation and maintenance of certain U.S. channels and harbors by the Army Corps of Engineers. U.S. Customs and Border Protection (CBP) is required to collect the HMF from importers, domestic shippers, and passenger vessel operators using

federal navigation projects. Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.125 percent of its value if the loading or unloading occurs at a port that has been designated by the Army Corps of Engineers. The HMF also applies to the total ticket value of embarking and disembarking passengers and on cargo admissions into a Foreign Trade Zone (FTZ).

CBP Form 349, *Harbor Maintenance Fee Quarterly Summary Report*, and CBP Form 350, *Harbor Maintenance Fee Amended Quarterly Summary Report* are completed by domestic shippers, foreign trade zones applicants, and passenger vessel operators and submitted with payment to CBP. CBP proposes to amend Form 349 to add the respondent's email address and fax number.

CBP uses the information collected on CBP Forms 349 and 350 to verify that the fee collected is timely and accurately submitted. These forms are authorized by the Water Resources Development Act of 1986 (26 U.S.C. 4461, et seq.) and provided for by 19 CFR 24.24, which also includes the list of designated ports. CBP Forms 349 and 350 are accessible at <http://www.cbp.gov/xp/cgov/toolbox/forms/> or they may be completed and filed electronically at www.pay.gov.

Current Actions: This submission is being made to extend the expiration date of this information collection with a change to the burden hours resulting from revised estimates of the number of responses. CBP also proposes to add the respondent's email address and fax number to Form 349. There are no proposed changes to CBP 350.

Type of Review: Extension (with change)

Affected Public: Businesses

Estimated Number of Respondents: 575

Estimated Number of Responses: 2,300

Estimated Time per Respondent: 130 minutes

Estimated Total Annual Burden Hours: 1,246

Dated: May 2, 2011

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

[Published in the Federal Register, May 6, 2011 (76 FR 26311)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions**

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

ACTION: 60-Day Notice and request for comments; Extension and revision of an existing collection of information: 1651-0067.

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: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13).

DATES: Written comments should be received on or before July 8, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW, 5th Floor, Washington, DC. 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW, 5th Floor, Washington, DC. 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13). 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: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

OMB Number: 1651-0067

Form Number: None

Abstract: U.S. Customs and Border Protection (CBP) is responsible for determining whether imported articles that are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 9801.00.10, 9802.00.20, 9802.00.25, 9802.00.40, 9802.00.50, and 9802.00.60 are entitled to duty-free or reduced duty treatment. In order to file under these HTSUS provisions, importers, or their agents, must have the declarations that are provided for in 19 CFR 10.1(a), 10.8(a), and 10.9(a) in their possession at the time of entry and submit them to CBP upon request. These declarations enable CBP to ascertain whether the statutory conditions and requirements of these HTSUS provisions have been satisfied. CBP proposes to add the declaration filed under HTSUS 9817.00.40 in accordance with 19 CFR 10.121 to this information collection.

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours resulting from updated estimates of the response time, and the addition of HTSUS 9817.00.40. There are no other changes to the information being collected.

Type of Review: Extension and Revision

Affected Public: Businesses

Estimated Number of Respondents: 19,455

Estimated Number of Responses per Respondent: 3

Estimated Number of Total Annual Responses: 58,335

Estimated Time per Response: 1 minute

Estimated Total Annual Burden Hours: 933

Dated: May 3, 2011

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

AGENCY INFORMATION COLLECTION ACTIVITIES:**Notice of Detention**

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651-0073.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Notice of Detention. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 9806) on February 22, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 9, 2011.

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

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

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

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

Title: Notice of Detention

OMB Number: 1651-0073

Form Number: None

Abstract: Customs and Border Protection (CBP) may detain merchandise when it has reasonable suspicion that the subject merchandise may be inadmissible but requires more information to make a positive determination. If CBP decides to detain merchandise, a Notice of Detention is sent to the importer or to the importer's broker/agent no later than 5 business days from the date of examination stating that merchandise has been detained, the reason for the detention, and the anticipated length of the detention. The recipient of this notice may respond by providing information to CBP in order to facilitate the determination for admissibility or may ask for an extension of time to bring the merchandise into compliance. Notice of Detention is authorized by 19 U.S.C. 1499, and provided for in 19 CFR 151.16.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours. There is no change to the information being collected.

Type of Review: Extension

Affected Public: Businesses

Estimated Number of Respondents: 1,350

Estimated Number of Responses per Respondent: 1

Estimated Number of Total Annual Responses: 1,350

Estimated Time per Response: 2 hours

Estimated Total Annual Burden Hours: 2,700

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

Dated: May 3, 2011

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

[Published in the Federal Register, May 10, 2011 (76 FR 27079)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Application to Pay Off or Discharge an Alien Crewman**

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651-0106.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Pay Off or Discharge an Alien Crewman (Form I-408). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 10913) on February 28, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 9, 2011.

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

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

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

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

Title: Application to Pay Off or Discharge an Alien Crewman

OMB Number: 1651-0106

Form Number: I-408

Abstract: CBP Form I-408, Application to Pay Off or Discharge an Alien Crewman, is used as an application by the owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States to obtain permission from the Secretary of the Department of Homeland Security to pay off or discharge an alien crewman. This form is submitted to the CBP officer having jurisdiction over the area in which the vessel or aircraft is located at the time of application. CBP Form I-408 is authorized by Section 256 of the Immigration and Nationality Act (8 U.S.C. 1286) and provided for by 8 CFR 252.1(h). This form is accessible at: http://forms.cbp.gov/pdf/CBP_Form_I408.pdf.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Respondents: 85,000

Estimated Time per Respondent: 25 minutes

Estimated Total Annual Burden Hours: 35,360

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

Dated: May 4, 2011

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

[Published in the Federal Register, May 10, 2011 (76 FR 27080)]