

# U.S. Customs and Border Protection

## *CBP Decisions*

**19 CFR PART 10**

**Docket No. USCBP-2009-0015**

**CBP Dec. 09-17**

**RIN 1505-AC13**

### **IMPORTED DIRECTLY REQUIREMENT UNDER THE UNITED STATES - BAHRAIN FREE TRADE AGREEMENT**

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

**ACTION:** Interim final rule; solicitation of comments.

**SUMMARY:** This document amends the U.S. Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (19 CFR) on an interim basis to change certain provisions relating to the requirement under the United States-Bahrain Free Trade Agreement (BFTA) that a good must be “imported directly” from one BFTA Party to the other Party to qualify for preferential tariff treatment. The change involves removing the condition that a good passing through the territory of an intermediate country while en route from a Party to the other Party must remain under the control of the customs authority of the intermediate country. This change more closely conforms these regulatory provisions to the BFTA and the BFTA implementing statute.

**DATES:** This interim final rule is effective May 22, 2009. Comments must be received on or before July 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** Karen Greene, Regulations and Rulings, Office of International Trade, (202) 325-0041.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2009-0015.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U. S. Customs and Border Protection, 799 9th Street, N.W. – 5th Floor, Washington, DC 20229-1179.

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

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

## **SUPPLEMENTARY INFORMATION:**

### **Public Participation**

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

### **Background**

On September 14, 2004, the United States and the Kingdom of Bahrain (the Parties) signed the U.S.-Bahrain Free Trade Agreement (BFTA). The provisions of the BFTA were adopted by the

United States with the enactment on January 11, 2006, of the United States-Bahrain Free Trade Area Implementation Act (the Act), Public Law 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note).

On October 16, 2007, CBP published CBP Dec. 07–81 in the **Federal Register** (72 FR 58511), setting forth interim amendments to implement the preferential tariff treatment and customs-related provisions of the BFTA. The majority of the BFTA implementing regulations were included within new subpart N in part 10 of the CBP regulations (19 CFR subpart N, part 10). In CBP Dec. 08–23, published in the **Federal Register** on July 23, 2008 (73 FR 42679), CBP adopted the interim regulations set forth in CBP Dec. 07–81 as a final rule with two technical corrections.

Section 10.817(a) of the CBP regulations implementing the BFTA sets forth the basic requirement, found in Article 4.1 of the BFTA, that a good must be “imported directly” from the territory of a Party into the territory of the other Party to qualify as an originating good under the BFTA. In circumstances in which a shipment passes through the territory of a non-Party, § 10.817(a)(2) provides that a good will be considered to be “imported directly” only if the good: (i) remained under the control of the customs authority of the non-Party; and (ii) did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than certain specified minor operations. Nearly identical language to that found in § 10.817(a) appears in § 10.822(a), relating to the application of the “imported directly” requirement to certain non-originating textile and apparel goods that qualify for preferential tariff treatment under an applicable tariff preference level (TPL).

Article 4.9 of the BFTA provides that a good shall not be considered to be “imported directly” from the territory of the other Party if the good undergoes subsequent production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party. Section 202(g) of the Act mirrors the language in Article 4.9 of the Agreement. Neither the BFTA nor the Act includes a requirement that a good must remain under the control of the customs authority of a non-Party to qualify as having met the “imported directly” requirement when the good passes through the territory of a non-Party.

### **Explanation of Amendments**

It has been brought to the attention of CBP that there is no explicit requirement in the BFTA or the Act that a good must remain under the control of the customs authority of a non-Party to qualify as having been “imported directly” from a Party. Therefore, to more closely conform paragraph (a)(2) of §§ 10.817 and 10.822 to the Agreement and the Act, these regulatory provisions have been re-

vised in this interim rule document to remove the “customs control” requirement. Specifically, paragraph (a)(2)(i) of §§ 10.817 and 10.822 has been removed and text of current paragraph (a)(2)(ii) of §§ 10.817 and 10.822 has been incorporated into the paragraph (a)(2) introductory text of these sections.

CBP notes that these changes provide consistency between the BFTA implementing regulations and the CBP regulations implementing the United States-Morocco Free Trade Agreement (MFTA) relating to the “imported directly” requirement under these two FTAs. The language in the BFTA and MFTA and the two implementing statutes are nearly identical in regard to this requirement.

### **Inapplicability of Notice and Delayed Effective Date Requirements**

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

### **Executive Order 12866**

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

### **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required under the APA for the reasons described above, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.), do not apply to this rulemaking. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

### Signing Authority

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

### List of Subjects in 19 CFR Part 10

Customs duties and inspection, Exports, Imports, Preference programs, Trade agreements.

### Amendments to the CBP Regulations

Accordingly, chapter 1 of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

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

1. The general authority citation for part 10 and the specific authority for subpart N continue to read as follows:

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

\* \* \* \* \*

Section 10.801 through 10.829 also issued under 19 U.S.C. 1202 (General Note 30, HTSUS) and Pub. L. 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note).

2. Section 10.817 is amended by revising paragraph (a)(2) to read as follows:

#### **§ 10.817 Imported directly.**

- (a) \* \* \*  
(1) \* \* \*

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be “imported directly” only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged

and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

2. Section 10.822 is amended by revising paragraph (a)(2) to read as follows:

**§ 10.822 Transshipment of non-originating fabric or apparel goods.**

(a) \* \* \*  
(1) \* \* \*

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be “imported directly” only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

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

Approved: May 19, 2009

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

[Published in the Federal Register, May 22, 2009 [(74 FR 23949)]

*General Notices*

**ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 101 20th Street

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

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

**DATES:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on February 18, 2009. The next triennial inspection date will be scheduled for February 2012.

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

Dated: May 15, 2009

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

[Published in the Federal Register, May 21, 2009 [(74 FR 23874)]

#### **AGENCY INFORMATION COLLECTION ACTIVITIES:**

##### **Application to Use the Automated Commercial Environment (ACE)**

**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: 1651-0105

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following infor-

mation collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Use the Automated Commercial Environment (ACE). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 11126) on March 16, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before June 22, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

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

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



**Title:** Application to Use ACE

**OMB Number:** 1651-0105

**Form Number:** None

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

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

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

**Affected Public:** Businesses

**Estimated Number of Respondents:** 21,000

**Estimated Time Per Response:** 20 minutes

**Estimated Total Annual Burden Hours:** 6,930

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

Dated: May 14, 2009

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

[Published in the Federal Register, May 21, 2009 [(74 FR 23878)]]

#### **AGENCY INFORMATION COLLECTION ACTIVITIES:**

##### **Importers of Merchandise Subject to Actual Use Provisions**

**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: 1651-0032

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Importers of Merchandise Subject to Actual Use Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this informa-

tion collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5846) on February 2, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before June 22, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

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

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

**Title:** Importers of Merchandise Subject to Actual Use Provisions

**OMB Number:** 1651-0032

**Form Number:** None

**Abstract:** The Importers of Merchandise Subject to Actual Use Provision is provided for in CBP regulation 19 CFR 10.137. It allows that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records including a statement of use.

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

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

**Affected Public:** Businesses

**Estimated Number of Respondents:** 12,000

**Estimated Time Per Respondent:** 65 minutes

**Estimated Total Annual Burden Hours:** 13,000

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

Dated: May 14, 2009

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

[Published in the Federal Register, May 21, 2009 [(74 FR 23878)]

## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **General Declaration**

**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: 1651-0002

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: General Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments

from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 11125) on March 16, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before June 22, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

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

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

**Title:** General Declaration

**OMB Number:** 1651-0002

**Form Number:** Form 7507

**Abstract:** CBP Form 7507 allows an agent or pilot to make entry of an aircraft, as required by statute. This form is used to docu-

ment clearance of the arriving aircraft at the required inspectional facilities, and inspections by appropriate regulatory agency staffs.

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

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

**Affected Public:** Businesses or other for-profit institutions

**Estimated Number of Respondents:** 500

**Estimated Number of Total Annual Responses:** 1,000,000

**Estimated Time Per Response:** 5 minutes

**Estimated Total Annual Burden Hours:** 83,333

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

Dated: May 14, 2009

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

[Published in the Federal Register, May 21, 2009 [(74 FR 23877)]]

#### **AGENCY INFORMATION COLLECTION ACTIVITIES:**

##### **Declaration for Free Entry of Returned American Products**

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

**ACTION:** 60-Day notice and request for comments; Extension of an existing information collection: 1651-0011

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

**DATES:** Written comments should be received on or before July 20, 2009, to be assured of consideration.

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

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

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

**Title:** Declaration of Free entry of Returned American Products

**OMB Number:** 1651-0011

**Form Number:** Form-3311

**Abstract:** When free entry is claimed for a shipment of returned American products under the Harmonized Tariff Schedules of the United States (HTSUS), Form-3311 is one of the supporting documents which substantiates the claim for duty free status.

**Current Actions:** This submission is being made to extend the expiration date without a change to the burden hours.

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

**Affected Public:** Businesses

**Estimated Number of Respondents:** 12,000

**Estimated Number of Annual Responses per Respondent:** 35

**Estimated Number of Total Responses:** 420,000

**Estimated Time Per Respondent:** 7 minutes

**Estimated Total Annual Burden Hours:** 51,000

Dated: May 14, 2009

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

[Published in the Federal Register, May 21, 2009 [(74 FR 27877)]]

## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **Importer's ID Input Record**

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

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0064

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

**DATES:** Written comments should be received on or before July 20, 2009, to be assured of consideration.

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

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

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

ity; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) 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:** Importer's ID Input Record

**OMB Number:** 1651-0064

**Form Number:** Form 5106

**Abstract:** Form 5106 is filed with the first formal entry or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. The number, name, and address conveyed on the Form 5106 is the basis for establishing bond coverage, release and entry of merchandise, liquidation, issuance of bills and refunds, and processing of drawback and FP&F actions.

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

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

**Affected Public:** Businesses

**Estimated Number of Respondents:** 500

**Estimated Number of Annual Responses per Respondent:** 2

**Estimated Number of Total Annual Responses:** 1000

**Estimated Time Per Response:** 6 minutes

**Estimated Total Annual Burden Hours:** 100

Dated: May 14, 2009

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



**AGENCY INFORMATION COLLECTION ACTIVITIES:****Deferral of Duty on Large Yachts Imported for Sale**

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

**ACTION:** 60-Day notice and request for comments; Extension of an existing information collection: 1651-0080

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

**DATES:** Written comments should be received on or before July 20, 2009, to be assured of consideration.

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

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

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

**Title:** Deferral of Duty on Large Yachts Imported for Sale

**OMB Number:** 1651-0080

**Form Number:** None

**Abstract:** Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable "large yacht" may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

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

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

**Affected Public:** Business and non-profit institutions

**Estimated Number of Respondents:** 100

**Estimated Time Per Respondent:** 1 hour

**Estimated Total Annual Burden Hours:** 100

Dated: May 14, 2009

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

[Published in the Federal Register, May 21, 2009 [(74 FR 23875)]

**Docket No. USCBP-2009-0014**

**Notice of the Meeting of the U.S. Customs and Border  
Protection Airport and Seaport Inspections User Fee  
Advisory Committee**

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

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The U.S. Customs and Border Protection (CBP) Airport and Seaport Inspections User Fee Advisory Committee (Advisory Committee) will meet in open session. The meeting will be open to the public.

**DATE:** Wednesday, June 10, 2009, from 12:00 p.m. to 4:00 p.m. Please note that the meeting may close early if the committee has completed all business.

**ADDRESSES:** The meeting will be held at Continental Room C, Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Washington, DC. Written material, comments, requests to make oral presentations, and requests to have a copy of your material distributed to each member of the committee prior to the meeting must be submitted to the contact person listed below by Friday, May 29, 2009. Comments must be identified by USCBP-2009-0014 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** [anna.brown@dhs.gov](mailto:anna.brown@dhs.gov). Include the docket number in the subject line of the message.
- **Facsimile:** (202) 344-1818.
- **Mail:** Mrs. Jean Brown, Office of Finance, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 4.5A, Washington, DC 20229.

**Instructions:** All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received by the Airport and Seaport Inspections User Fee Advisory Committee, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Jean Brown, Office of Finance, U.S. Customs and Border Protection, 1300 Pennsylvania Ave, NW, Suite 4.5A, Washington, DC 20229; *e-mail:* [anna.brown@dhs.gov](mailto:anna.brown@dhs.gov); *telephone:* (202) 344-1910; *facsimile:* (202) 344-1818.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 U.S.C., App.), the Department of Homeland Security (DHS) hereby announces the meeting of the U.S. Customs and Border Protection (CBP) Airport and Seaport Inspections User Fee Advisory Committee (hereinafter, “Advisory Committee”). This Advisory Committee was established pursuant to section 286(k) of the Immigration and Nationality Act (INA), codified at title 8 U.S.C. 1356(k), which references the Federal Advisory Committee Act (5 U.S.C., App. *et seq.*). With the merger of the Immigration and Naturalization Service into DHS, the Advisory Committee’s responsibilities were transferred from the Attorney General to the Commissioner of CBP pursuant to section 1512(d) of the Homeland Security Act of 2002. The Advisory Committee held its first meeting under the direction of CBP on October 22, 2003 (see 68 FR 56301, September 30, 2003). Among other things, the Advisory Committee advises

DHS via the Commissioner of CBP on issues related to the performance of airport and seaport inspections involving agriculture, customs, or immigration based concerns. This advice includes, but is not limited to issues such as the time period during which such services should be performed and the proper number and deployment of inspection officers. Additionally, this advice includes the level and the appropriateness of the following fees assessed for CBP services: the immigration user fee pursuant to 8 U.S.C. 1356(d), the customs inspection user fee pursuant to 19 U.S.C. 58c(a)(5), and the agriculture inspection user fee pursuant to 21 U.S.C 136a.

The seventh meeting of the Advisory Committee will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

#### **Tentative Agenda**

1. Introduction of Committee members and CBP Personnel.
2. Report of activities since last meeting held on March 5, 2008.
3. Update on the proposal to consolidate customs and immigration user fees.
4. Discussion of Model Ports next steps.
5. Discussion of the ESTA requirement compliance and possible date for enforcement.
6. Overview and discussion of CBP's FY10 budget.
7. Discussion of the impact of the decline in international air passengers on user fee collections and CBP staffing levels.
8. Discussion of the Global Entry implementation, public outreach, and additional foreign partners.
9. Agree on consensus recommendations on the issues discussed.
10. Discussion of Committee administrative issues and scheduling of next meeting.
11. Adjourn.

#### **Procedural**

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Public participation in the deliberations is welcome; however, please note that matters outside of the scope of this committee will not be discussed.

All visitors to the Ronald Reagan Building will have to show a picture ID in order to be admitted into the building. Since seating is limited, all persons attending this event must provide notice, preferably by close of business on Friday, May 29, 2009, to Mrs. Jean Brown, Office of Finance, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 4.5A, Washington, DC 20229; *e-mail*: [anna.brown@dhs.gov](mailto:anna.brown@dhs.gov); *telephone*: (202) 344-1910; *facsimile*: (202) 344-1818.

**Information on Services for Individuals with Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mrs. Jean Brown as soon as possible.

Dated: May 18, 2009

ELAINE KILLORAN,  
*Acting Assistant Commissioner,*  
*Office of Finance,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, May 26, 2009 [(74 FR 24870)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, May 27, 2009*

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

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

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**MODIFICATION OF A RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF THE “FIRSTMATE” SHOE**

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

**ACTION:** Modification of a classification ruling letter and revocation of treatment relating to the classification of the “Firstmate” shoe.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying a ruling letter relating to the classification of an article identified as the “Firstmate” shoe. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 15, on April 10, 2009. No comments were received in response to the notice.

**DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ann Segura Minardi, Tariff Classification and Marking Branch: (202) 325-0031.

**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 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. Section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S. C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 43, No. 15, on April 10, 2009, proposing to modify a ruling letter pertaining to the classification of an article identified as the “Firstmate” shoe. Although in that notice, CBP specifically proposed to modify New York Ruling letter (NY) M86737, dated October 13, 2006, the notice covers any rulings on this merchandise which may exist but have not been specifically identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. Section 1625(c)(1), CBP is modifying NY M86737, and revoking or modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H005083, set forth in the "Attachment" to this document. Additionally pursuant to 19 U.S.C. Section 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

**DATED:** May 19, 2009

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H005083  
CLA-2 OT:RR:CTF:TCM H005083 ASM  
CATEGORY: Classification  
TARIFF NO.: 6402.99.8060

SARAH O'HARE O'NEAL  
ROBERT B. SILVERMAN, ESQ.  
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & LESTADT, LLP  
399 Park Avenue, 25th Floor  
New York, NY 10022-4877

RE: Modification of NY M86737, dated October 13, 2006; Tariff Classification of the "Firstmate" Shoe

DEAR MS. O'NEAL AND MR. SILVERMAN:

This is in response to a request for reconsideration dated December 21, 2006, made on behalf of your client, Nine West Footwear Corp. (hereinafter "Nine West"), of New York Ruling letter (NY) M86737, issued by Customs and Border Protection (CBP) on October 13, 2006, which classified, in relevant part, the subject footwear, identified as "Firstmate", under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample has been submitted to CBP for examination.

CBP has reviewed the classification of the "Firstmate" shoe and determined that the cited ruling is in error. Therefore, NY M86737 is modified for the reasons set forth in this ruling.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. Section 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY M86737, was published in Vol. 43, No. 15, of the *Customs Bulletin* on April 10, 2009. No comments were received in response to the notice.



**FACTS:**

The subject article is a woman's shoe identified as "Firstmate". This shoe features a closed toe with a functionally stitched upper comprised of rubber, plastic, and textile materials. The predominant materials used to construct the external surface of the upper are rubber and plastic. The shoe also has open side panels with two hook-and-loop style closures over the instep. The heel of the shoe is also constructed with an adjustable hook-and-loop closure strap that is secured through a loop sewn to a rubber panel measuring approximately 2 inches wide x 2 ½ inches high. This allows for a small vented opening on either side of the heel panel. The sole is constructed of a molded rubber and plastic bottom that overlaps the upper with a foxing-like band.

In NY M86737, CBP determined that the "Fistmate" style shoe was an "open-heel" shoe for classification purposes. Thus, the merchandise was classified in subheading 6402.99.30, HTSUSA, which provides for footwear in which both the upper and outer sole's external surface is predominately rubber and/or plastics; which is not "sports footwear"; and which does not cover the ankle.

You have asserted, on behalf of Nine West, that NY M86737 is erroneous with respect to the classification of the "Firstmate" shoe and that it should have been classified as a "closed-heel" shoe under subheading 6402.99.8060, HTSUSA.

**ISSUE:**

Whether the "firstmate" is classified in subheading 6402.99.30, HTSUSA, as an open-heel shoe or in subheading 6402.99.80, HTSUSA, as a closed-heel shoe.

**LAW AND ANALYSIS:**

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

Subheading 6402.99.30, HTSUSA (2006), provided for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear : Other: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.20 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper".

Subheading 6402.99.80, HTSUSA (2006), provided for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Valued over \$6.50 but not over \$12/pair".

In this instance, it is important to note that GRI 6 is applicable and provides as follows:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same

level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

On November 17, 1993, in the Customs Bulletin, Volume 27, Number 46, CBP published Treasury Decision (T.D.) 93-88, which contains certain footwear definitions. The footwear definitions are merely guidelines but state, in pertinent part, that for footwear classification purposes, CBP interprets the "heel" to be the rearmost boney part of the human foot, the top of which is located just below the Achilles tendon. Further, "open" is defined as "[i]n open heeled shoes, all or part of the back of the wearer's heel can be seen".

After careful examination of the sample provided, we now note that the heel panel is sufficiently wide (2 inches wide x 2 ½ inches high) to completely cover the rearmost boney part of the average human foot. As such, we note that the subject "Firstmate" shoe was erroneously classified as an "open-heel" shoe in NY M86737.

In view of the foregoing, we now find that the subject sample is not an "open heel" shoe but is properly classified as a "closed heel" shoe in subheading 6402.99.8060, HTSUSA.

**HOLDING:**

The subject merchandise, identified as the "Firstmate" shoe, was correctly classified in subheading 6402.99.8060, HTSUSA, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Valued over \$6.50 but not over \$12/pair, For women". The 2009 general column one rate of duty is 90 cents/pair + 20 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY M86737, dated October 13, 2006, is hereby modified consistent with the foregoing. In accordance with 19 U.S.C. Section 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

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

**PROPOSED MODIFICATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
ELIGIBILITY UNDER THE DR-CAFTA OF CERTAIN  
HOSIERY**

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

**ACTION:** Proposed modification of a classification ruling letter and revocation of treatment relating to the eligibility under the Dominican Republic- Central America Free Trade Agreement (DR-CAFTA) of certain hosiery.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to modify a ruling letter relating to the eligibility under the DR-CAFTA of certain hosiery. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

**DATE:** Comments must be received on or before July 12, 2009.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th St. N.W., Washington, D.C. 20229-1179. Submitted comments may be inspected at the offices of Customs and Border Protection, 799 9th Street, NW, Washington, D.C. 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:** Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

**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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the eligibility under the DR-CAFTA of certain hosiery.

Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N028235, dated May 20, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is 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 N028235, CBP determined that hosiery containing non-originating elastomeric yarns was eligible for duty free entry under the DR-CAFTA. Since the issuance of that ruling, CBP has reviewed the eligibility of the hosiery and has determined that the cited ruling is in error. The classification of the hosiery as set forth in NY N028235 is not subject to the instant modification and accurately reflects CBP's current position.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY N028235 and is proposing to revoke or modify any other ruling not specifically identified, to reflect the eligibility of the hosiery according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H045716, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** May 19, 2009

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

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
N028235  
May 20, 2008  
CLA-2-61:OT:RR:NC:3:348  
CATEGORY: Classification  
TARIFF NO.: 6115.21.0020;  
6115.22.0000; 5606.00.0010

ELISE SHIBLES  
SANDLER, TRAVIS & ROSENBERG, P.A.  
*5200 Blue Lagoon Drive*  
*Miami, FL 33126*

RE: The tariff classification and status under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA), of hosiery from Guatemala.

DEAR MS. SHIBLES:

In your letter dated May 8, 2008, on behalf of your client Hanesbrands, Inc., you requested a ruling on the status of hosiery under the DR-CAFTA.

The submitted samples are pantyhose, Just My Size™ style 93315-E3J and Hanesbrands® Silk Reflections style 717. Style 93315-E3J panty is composed of 92% nylon and 8% spandex. The legs are composed of 88% nylon and 12% spandex. Style 717 panty is composed of 82% nylon and 18% spandex. The legs are composed 85% nylon and 15% spandex. You do not state the decitex for either styles.

You also submitted three samples of yarn. Style C3M 8707C consists of a spandex core with a polyester yarn wrapped around the core. Style C3M S136M consists of a spandex core with a texturized nylon yarn wrapped around the core. Style C3M S152M consists of a spandex core with a nylon yarn wrapped around the core. All three yarns are gimped yarns.

You state the yarns will be produced in non-DR-CAFTA countries and then shipped to Guatemala. In Guatemala, the hosiery will be knit to shape from the non- DR-CAFTA yarns. The hosiery will than be shipped directly to the U.S.

The classification for the hosiery, if measuring per single yarn less than 67 decitex, will be 6115.21.0020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied, knitted or crocheted: Other panty hose and tights: Of synthetic fibers, measuring per single yarn less than 67 decitex, other. The rate of duty will be 16 percent ad valorem.

The classification for the hosiery, if measuring per single yarn 67 decitex or more, will be 6115.22.0000, HTSUS, which provides for panty hose, tights, stockings, socks and other hosiery . . . knitted or crocheted: panty hose and tights: of synthetic fibers, measuring per single yarn 67 decitex or more: other. The duty rate will be 14.9 percent ad valorem.

The applicable subheading for the gimped yarns will be 5606.00.0010, HTSUS, which provides for gimped yarn, containing elastomeric filaments. The general rate of duty will be 8 percent ad valorem.

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

General Note (GN) 29, HTSUS, sets forth the criteria for determining whether a good is originating under the DR-CAFTA. GN 29(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if—

(i) the good is a good wholly obtained or produced entirely in the territory of one or more of the parties to the Agreement;

(ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and—

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note;

and the good satisfies all other applicable requirements of this note; or

(iii) the good was produced entirely in the territory of one or more of the parties to the Agreement exclusively from originating materials.

As the goods contain nonoriginating materials, they would have to undergo an applicable change in tariff classification in order to meet the requirements of GN 29(b)(ii)(A). The specific rule for GN 29(n) Chapter 61/36 states, A change to headings 6113 through 6117 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties.

The non DR-CAFTA yarns, used in the production of the hosiery, meet the terms of the tariff shift rule. Therefore, Style 933-15-E3J and 717 are entitled to a free rate of duty under the DR-CAFTA upon compliance with all applicable laws, regulations, and agreements.

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 Rosemarie Hayward at 646-733-3064.

ROBERT B. SWIERUPSKI,

*Director;*

*National Commodity Specialist Division.*

## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H045716  
CLA-2 OT:RR:CTF:TCM H045716 KSH  
CATEGORY: Classification  
TARIFF NO.: 6115.21.0020 or 6115.22.0000

ELISE SHIBLES, ESQ.  
SANDLER, TRAVIS & ROSENBERG P.A.  
5200 Blue Lagoon Drive  
Miami, FL 33126

RE: Modification of NY N028235; eligibility of hosiery under the DR-CAFTA.

DEAR MS. SHIBLES:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N028235, issued to you on May 20, 2008, on behalf of your client Hanesbrands Inc., concerning, in relevant part, the eligibility under the Dominican Republic-Central America Free Trade Agreement of hosiery containing non-originating elastomeric yarns. The hosiery was determined to have been eligible for duty free treatment under the DR-CAFTA. We have reviewed that ruling and found it to be in error as it pertains to the duty free eligibility of the hosiery under the DR-CAFTA. Therefore, this ruling modifies NY N028235.

FACTS:

The merchandise at issue was described in NY N028235 as follows:

The submitted samples are pantyhose, Just My Size™ style 93315-E3J and Hanesbrands® Silk Reflections style 717. Style 93315-E3J panty is composed of 92% nylon and 8% spandex. The legs are composed of 88% nylon and 12% spandex. Style 717 panty is composed of 82% nylon and 18% spandex. The legs are composed 85% nylon and 15% spandex. You do not state the decitex for either styles.

You also submitted three samples of yarn. Style C3M 8707C consists of a spandex core with a polyester yarn wrapped around the core. Style C3M S136M consists of a spandex core with a texturized nylon yarn wrapped around the core. Style C3M S152M consists of a spandex core with a nylon yarn wrapped around the core. All three yarns are gimped yarns.

You state the yarns will be produced in non-DR-CAFTA countries and then shipped to Guatemala. In Guatemala, the hosiery will be knit to shape from the non- DR-CAFTA yarns. The hosiery will than be shipped directly to the U.S.

ISSUE:

Whether the hosiery containing non-originating elastomeric yarns is eligible for duty free treatment under the DR-CAFTA.

## LAW AND ANALYSIS:

The Dominican Republic - Central America - United States Free Trade Agreement ("DR-CAFTA" or "Agreement") was signed by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. The DR-CAFTA was approved by the U.S. Congress with the enactment on August 2, 2005, of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the "Act"), Pub. L. 109-53, 119 Stat. 462 (19 U.S.C. 4001 et seq.). The Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and the United States are currently parties to the agreement.

General Note (GN) 29 of the HTSUS implements the DR-CAFTA. GN 29(a) states, in relevant part:

Goods for which entry is claimed under the terms of the Dominican Republic-Central America-United States Free Trade Agreement are subject to duty as set forth herein. For the purposes of this note –

originating goods or goods described in subdivision (a)(ii), subject to the provisions of subdivisions (b) through (n) or this note, that are imported into the customs territory of the United States and entered under a provision –

(A) in chapters 1 through 97 of the tariff schedule for which a rate of duty appears in the "Special" subcolumn of column 1 followed by the symbol "P" or "P+" in parentheses, or

\* \* \*

are eligible for the tariff treatment and quantitative limitations set forth therein in accordance with sections 201 through 203, inclusive, of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109-53; 119 Stat. 462).[.]

\* \* \*

GN 29(b) sets forth criteria for determining whether a good (other than agricultural goods provided for in GN 29(a)(ii)) is an originating good for purposes of the DR-CAFTA. GN 29(b) states, in relevant part:

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if –

\* \* \*

(ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and –

each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note; and the good satisfies all other applicable requirements of this note; or

\* \* \*

Subdivision (n) referred to in GN 29(b) sets forth the tariff shift method of qualifying as an originating good under DR-CAFTA. GN 29(n), Chapter 61,



Rule 36, which is applicable to knitted panty hose, provides:

A change to headings 6113 through 6117 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties.

The non-originating yarns used in the production of the hosiery are classified in heading 5605, HTSUS. See NY N028235, dated May 20, 2008. Insofar as heading 5605, HTSUS, is not excepted from GN 29(n), Chapter 61, Rule 36, the non-originating yarns meet the tariff shift rule.

However, GN 29(b) provides that a determination whether a good is an originating good for purposes of the DR-CAFTA, is "subject to the provisions of subdivisions (c), (d), (m) and (n)."<sup>1</sup>

GN 29(d), HTSUS, provides, that:

- (i) A textile or apparel good that is not an originating good under the terms of this note, because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in subdivision (n) of this note, shall be considered an originating good if—
  - (A) the total weight of all such fibers or yarns in that component is not more than ten percent of the total weight of that component; or
  - (B) such yarns are nylon filament yarns (other than elastomeric yarn) provided for in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00 or 5402.61.00 of the tariff schedule from a country that is a party to an agreement with the United States establishing a free trade area which entered into force before January 1, 1995.

Notwithstanding the preceding sentence, a textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a party to the Agreement.

The implementing legislation for the DR-CAFTA, Pub. L. 109-53, 119 Stat. 462, Section 203(f) provides the following, in relevant part:

(3) TEXTILE OR APPAREL GOODS.—

- (A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification, set out in Annex 4.1 of the Agreement, shall be considered to be an originating good if—

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<sup>1</sup> We note that neither GN 29(c) nor GN 29(m) are applicable insofar as the hosiery does not contain a yarn or fabric in short supply.

- (i) the total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or
- (ii) the yarns are those described in section 204(b)(3)(B)(vi)(IV) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(vi)(IV))(as in effect on the date of the enactment of this Act).

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a CAFTA–DR country.

In Rico Import Co. v. United States, Slip Op. 92–146, dated August 27, 1992, the court stated that “[i]t is well settled that tariff acts must be construed to carry out the intent of the legislature.” See Nippon Kogaku (USA), Inc. v. United States, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982)(citing Sandoz Chem. Works, Inc. v. United States, 43 CCPA 152, 156, C.A.D. 623 (1956)). The first place to look to establish the intent of Congress is the language of the statute itself. Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980).

Based upon the foregoing, it is clear from the implementing legislation that elastomeric yarn contained in the component that determines the classification of a textile or apparel good must be “wholly formed” in the territory of a DR-CAFTA party. Although when Pub. L. 109–53 was implemented into the HTSUS, the requirement set forth in section 203(f)(3)(B) regarding elastomeric yarns was grouped in a paragraph which also set forth the de minimis rule (i.e., GN 29(d)(i)), the requirement that elastomeric yarn must be wholly formed in the territory of a DR-CAFTA party is a separate and distinct requirement which is applicable irrespective of whether the textile or apparel good contains a fiber or yarn subject to the de minimis rule. This provision in GN 29(d) applies regardless of whether the tariff shift rule is met. Consequently, the non-originating elastomeric yarn disqualifies the hosiery from eligibility for duty-free treatment under the DR-CAFTA.

**HOLDING:**

The hosiery made in Guatemala containing non-originating elastomeric yarns is not eligible for duty-free treatment under the DR-CAFTA.

**EFFECT ON OTHER RULINGS:**

NY N028235, dated May 20, 2008, is modified.

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