

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., SBA certifies that this proposed rule, if promulgated in final form, will not have a significant economic impact on a substantial number of small entities.

The SBA certifies that this proposed rule, if promulgated in final form, will not constitute a significant regulatory action for the purposes of Executive Order 12866, since the proposed change is not likely to result in an annual effect on the economy of \$100 million or more.

The SBA certifies that the proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

The SBA certifies that this proposed rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this proposed rule, if promulgated in final form, is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Program No. 59.012)

List of Subjects in 13 CFR Part 122

Loan programs—business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 122—BUSINESS LOANS

1. The authority citation for part 122 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a), 636(m).

2. Section 122.61–11(a) would be amended by revising the last sentence to read as follows:

§ 122.61–11 Program procedure.

(a) *Participation of intermediary by State.* * * * Further, no intermediary may undertake Program activities in more than one State unless the SBA Associate Administrator for Financial Assistance determines in writing that it would be in the best interest of the

small business community to operate across State lines.

* * * * *

Dated: March 31, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–11156 Filed 5–4–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 102, 134 and 177

[RIN 1515–AB19; RIN 1515–AB34]

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable to Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the interim Customs Regulations, published in the **Federal Register** on January 3, 1994, as T.D. 94–4, which established the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement. This document also republishes, with some modifications, proposed amendments to the Customs Regulations to set forth uniform rules governing the determination of the country of origin of imported merchandise, which were also published in the **Federal Register** on January 3, 1994. The purpose of the proposals set forth in this document is to clarify the intent, or otherwise facilitate understanding of, the previously-published interim and proposed regulatory amendments. In addition, this document solicits public comments on the appropriate effective date for a final rule action regarding the interim and proposed regulatory amendments.

DATES: Comments must be received on or before June 19, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sandra Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1994, Customs published T.D. 94–4 in the **Federal Register** (59 FR 110) setting forth interim regulations to establish rules for determining the country of origin of a good for purposes of Annex 311 of the North American Free Trade Agreement (NAFTA). The United States, Canada and Mexico entered into the NAFTA on December 17, 1992, and the provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. T.D. 94–4 stated that the interim regulations were effective on January 1, 1994, and also provided for a 90-day public comment period which was subsequently extended to July 5, 1994, by a notice published in the **Federal Register** on March 11, 1994 (59 FR 11547). On February 3, 1994, a notice was published in the **Federal Register** (59 FR 5082) setting forth corrections to the interim regulations contained in T.D. 94–4.

On January 3, 1994, Customs also published a document in the **Federal Register** (59 FR 141) which proposed to amend the Customs Regulations to set forth uniform rules governing the determination of the country of origin of imported merchandise; this notice of proposed rulemaking represented a refinement and replacement of an earlier proposal published in the **Federal Register** on September 25, 1991 (56 FR 48448). This January 3, 1994, document proposed: (1) To amend § 102.0 of the interim regulations published as T.D. 94–4 so that those interim regulations would apply not only for the purposes stated in Annex 311 of the NAFTA but would also apply in the broader context of country of origin determinations “for purposes of the Customs and related laws and the navigation laws of the United States”; and (2) to amend various provisions within Parts 4, 10, 12, 134 and 177 of the Customs Regulations (19 CFR Parts 4, 10, 12, 134 and 177) to ensure that the rules contained in interim Part 102 would control wherever language requiring a country of origin determination appears in those other regulatory provisions. Thus, under this notice of proposed rulemaking the interim rules set forth in T.D. 94–4 would apply wherever a provision of the Customs and related laws or the

navigation laws or a regulation thereunder uses language such as "new and different article of commerce", "wholly the growth, product, or manufacture", "product of", or "substantial transformation" for purposes of establishing the criteria for country of origin of a good. The notice of proposed rulemaking provided for a 90-day public comment period which was subsequently extended to July 5, 1994, by a notice published in the **Federal Register** on March 10, 1994 (59 FR 11225).

In view of the fact that the January 3, 1994, notice of proposed rulemaking presented the same regulatory scheme as the rules contained in T.D. 94-4, each document referred to the other and stated that public comments submitted in response to either document would be considered in connection with the review of both documents. The notice of proposed rulemaking further indicated that the background section and interim Part 102 regulatory texts set forth in T.D. 94-4 were applicable to it. Thus, it was intended that the two documents be read together so that, following public notice and comment procedures, one final rule document could be derived from the interim and proposed rule documents, consistent with the overall goal of promulgating uniform rules of origin for Customs and related purposes.

The publication of the interim regulations set forth in T.D. 94-4 was specifically intended to fulfill the United States obligation under paragraph 1 of NAFTA Annex 311 which provides that the parties to the NAFTA shall establish, by January 1, 1994, rules (referred to as "Marking Rules") for determining whether a good is a good of a party (that is, whether the country of origin of a good is either the United States, Canada or Mexico) for purposes of the following NAFTA Annexes: (1) Annex 311 (Country of Origin Marking); (2) Annex 300-B (Textile and Apparel Goods); and (3) Annex 302.2 (Tariff Elimination). T.D. 94-4 set forth these interim "Marking Rules" as a new Part 102 of the Customs Regulations (19 CFR Part 102), entitled "Rules of Origin", and also set forth consequential conforming interim amendments to existing sections within Parts 12 and 134 of the Customs Regulations (19 CFR Parts 12 and 134).

Interim Part 102 consists of §§ 102.0-102.20 and, following § 102.0 (Scope), is divided into two subparts. Subpart A is entitled "General" and consists of § 102.1 (Definitions), and Subpart B is entitled "Rules of Origin" and consists of §§ 102.11 through 102.20. Section 102.11 sets forth the general rules for determining the country of origin of a

good and consists of paragraphs (a) through (d) which are applied in a hierarchical and sequential manner. Thus, reference must be had first to paragraph (a) which provides that the country of origin of a good is: under subparagraph (1), the country in which the good is wholly obtained or produced; under subparagraph (2), the country in which the good is produced exclusively from domestic materials; or, under subparagraph (3), the country in which each foreign material incorporated in the good undergoes an applicable change in tariff classification set out in § 102.20 and/or satisfies any other applicable requirements contained in that section or elsewhere in Part 102. If the country of origin cannot be determined under paragraph (a) because the good does not meet the terms of subparagraph (1), (2) or (3), then resort must be had to paragraph (b) and, if that fails, then to paragraph (c) and, if that fails, finally to paragraph (d). Sections 102.12-102.19 set forth additional rules that serve to interpret, clarify, limit or otherwise control the application of the general rules contained in § 102.11 as well as the specific rules contained in § 102.20. Section 102.20 contains the specific change in tariff classification rules and/or related requirements referred to in the country of origin rule set forth in § 102.11(a)(3); the rules in § 102.20 are set forth for each Harmonized Tariff Schedule of the United States (HTSUS) chapter, and the applicable rule is determined by the HTSUS tariff classification that is applicable to the finished good at the time the country of origin determination is being made.

Based on a review of the comments received in response to the interim and proposed rule documents published in the **Federal Register** on January 3, 1994, and as a result of independent review of the interim and proposed texts within Customs, it has been determined (1) that some clarification and further explanation of the intent behind the proposed uniform rule concept should be provided and (2) that some changes should be made to the interim and proposed texts and that those changes should be the subject of public notice and comment procedures before proceeding to the final rule stage in this matter; the interim texts as published in T.D. 94-4 (and as subsequently corrected) remain in effect pending completion of such final rule action. In addition, Customs believes, for the reasons set forth below, that public comments should be solicited at this time regarding the appropriate use of a delayed effective date for any final rule

that results from the interim and proposed rules, including any changes thereto as proposed in this document.

Accordingly, this document (1) provides supplemental background information regarding the proposed uniform rule concept, (2) sets forth proposals, as discussed in detail below, to amend the interim regulatory texts contained in T.D. 94-4 published at 59 FR 110 and corrected at 59 FR 5082, (3) republishes all of the proposed regulatory amendments published at 59 FR 141 on January 3, 1994, with certain changes thereto as discussed in detail below, and (4) invites public comments on the appropriate effective date for a final rule on this matter. It is the intention of Customs to address in this document only those comments submitted in response to the January 3, 1994, notices that involve substantive changes to the interim or proposed texts requiring further public comment procedures; other such previously submitted comments will be addressed in an appropriate final rule or other document to be published at a later date. Comments will be accepted and considered in response to this document only in regard to the following: (1) The proposed changes to the interim regulatory texts as discussed and set forth below; (2) all other proposed regulatory amendments as discussed and set forth below which represent a substantive change to the proposals published on January 3, 1994; and (3) the final rule delayed effective date issue. Accordingly, comments which concern other issues involved in the January 3, 1994, documents, or which do not otherwise relate to the new proposals set forth in this document, will not be accepted and considered by Customs. For purposes of this document, the background sections of the January 3, 1994, interim and proposed rule documents are applicable except where otherwise required by a change set forth in this document.

Supplemental Background Information

Based on an apparent misunderstanding reflected in some of the comments received in response to the January 3, 1994, notice of proposed rulemaking, Customs believes that further clarification of the purpose of the development of these rules for all non-preference country of origin purposes is needed. This misunderstanding most probably stemmed from the following statement made in the Background portion of that document: "The change in tariff classification standard was specifically developed as an alternative to the traditional substantial transformation

rule in order to obviate the problems described above." This statement referred only to the distinction *in format* between the proposed rulemaking, which defines substantial transformation on the basis of published rules, and the traditional application of the substantial transformation principle. Customs was not proposing that the criteria for origin determination be based on a new standard; quite to the contrary, Customs intended that the same standard, substantial transformation, be applicable. As stated in the Discussion of Proposals portion of the January 3, 1994, notice of proposed rulemaking, the new Part 102 rules, which are proposed to be used for all non-preference country of origin determinations, are specifically intended to "codify", rather than constitute an alternative to the substantial transformation rule, i.e., "the criteria for determining whether a good has become a 'new and different article of commerce' as a result of a manufacturing process in a given country," and to "provide the results that would be reached under the case-by-case application of the substantial transformation rule."

The interim Part 102 rules, which Customs proposes to use for all non-preference country of origin determinations, are in fact specifically designed to implement the principles of the substantial transformation standard. In this regard, it should be noted that Customs views as relevant all court decisions involving substantial transformation for purposes of country of origin determination, regardless of the purpose for which the origin determination is being made. As favorably noted by the Court of International Trade in *Target Sportswear, Inc. v. United States*, Slip Op. 95-7 (January 23, 1995), the purpose of these rules is "to add more certainty and uniformity to the substantial transformation test." A summary of court decisions involving substantial transformation for country of origin purposes and their relationship to the interim Part 102 rules is set forth below in order to demonstrate the approach which Customs took in drafting the interim and proposed rules at issue, including the further proposals set forth in this document.

1. Country of Origin Marking Cases

With regard to country of origin marking, the area in which the substantial transformation principle is employed most often, the Part 102 rules will implement this principle consistent with court decisions in this area.

U.S. v. Gibson-Thomsen Co., Inc., 27 CCPA 267 (1970). The court held that the manufacturer of hair and tooth brushes from imported wood blocks and toothbrush handles was the "ultimate purchaser" by having manufactured the imported articles into new articles having a new name, character, and use. In this case, wooden toothbrush handles and brush blocks were imported for use in the manufacture of tooth and hair brushes. In the manufacture of the brushes, holes were bored into the handles and blocks; bristles were inserted and imbedded; the bristles were trimmed; and the handles were polished and stamped. In the opinion of the court, the imported wood blocks and handles lost their identities in a tariff sense as a result of the assembly process and became an integral part of a new article. Therefore, the court held that the imported articles were substantially transformed in the United States so that country of origin marking of the hair and tooth brushes was not required. The Part 102 rules are consistent with this case since the § 102.20 specific tariff shift rule for hairbrushes and toothbrushes allows a change to heading 9603 from any other heading, and the components which make up the finished toothbrushes and hairbrushes (handles, brush blocks, bristles) are all classified outside heading 9603.

National Juice Products Assn. v. U.S., 628 F.Supp. 978 (CIT 1986). In this case the court upheld Customs' determination that production of frozen concentrated and reconstituted orange juice from manufacturing concentrate is not a substantial transformation. The court also upheld Customs' determination that the manufacturing concentrate imparts the essential character to the juice and makes it orange juice. The court noted that the addition of water, orange essences, and oils to the concentrate, while making it suitable for retail sale, does not change the fundamental character of the product, which is still essentially the product of juices. The court concluded that the orange juice processors in the United States are not the ultimate purchasers of the imported product because consumers are the last purchasers to receive the product in essentially the form in which it is imported. Thus, in accordance with 19 U.S.C. 1304, the court held that the retail packaging must indicate the country of origin of the manufacturing concentrate. The Part 102 rule which covers reconstituted orange juice (and which specifies a change to subheading 2009.11 through 2009.30 from any other chapter) is consistent with National

Juice. Thus, just as the court in *National Juice* found that the process of mixing various ingredients with foreign manufacturing concentrate to create reconstituted orange juice did not result in a substantial transformation, the applicable Part 102 rule likewise does not allow origin to be conferred by a change from manufacturing concentrate to reconstituted orange juice.

Uniroyal, Inc. v. U.S., 542 F.Supp. 1026 (CIT 1983). In Indonesia, an upper was manufactured from sheets of leather into a substantially complete shoe, that is, it was "lasted" or permanently molded so that it was in its ultimate shape, form, and size when exported. The uppers were shipped to the United States where pre-shaped, pre-sized outsoles were attached to the uppers. The court held that despite the name change (upper to shoe) there was no substantial transformation because the attachment of the outsole to the upper was a minor manufacturing or combining process which left the identity of the upper intact. The upper when imported was readily recognizable as a distinct item apart from the outsole to which it was attached. The court found that the imported upper was the very "essence" of the finished shoe. Therefore, the court held that the operations performed in the United States did not constitute a substantial transformation and therefore the uppers were required to be marked with the country of origin. The Part 102 standard is consistent with the court's holding in *Uniroyal* because the specific tariff shift rule for shoes (headings 6401-6405) provides for a change to heading 6401 through 6405 from any tariff item outside that group except from formed uppers.

Koru North America v. U.S., 701 F.Supp. 229 (CIT 1988). In this case, Hoki fish caught off the coast of New Zealand were beheaded, de-tailed, eviscerated, and frozen aboard the ships in New Zealand. The fish were then sent to Korea for further processing which included thawing, skinning, boning, trimming, glazing, refreezing, and packaging the fish for shipment to the United States. The court held that the processing in Korea constitutes a substantial transformation. The court based this finding on a change in name and character, noting that there was a name change from "headed and gutted Hoki" to "individually quick-frozen fillets" as a result of the processing performed in Korea. The court also noted that the two types of fish are classified in separate tariff provisions. The court also found that the processing in Korea resulted in a change in the fundamental nature and character of the

fresh fish. The court noted that the fillets are considered discrete commercial goods and are sold in separate areas and markets different from the headed and gutted fish. Therefore, the court held that the Hoki should be properly marked as products of Korea. The Part 102 rules are consistent with this court decision since the rule for frozen fish fillets (heading 0304) allows a change to frozen fish fillets of heading 0304 from any other heading, and frozen, beheaded, detailed, eviscerated fish are classified in heading 0303 rather than in heading 0304.

MBI Merchandise Industries Inc. v. United States, 16 CIT 495 (1992). The court held that any Korean magnetic pages of a photo album were substantially transformed in Taiwan and in the People's Republic of China when they were incorporated into the finished photo album. The court noted that the character of the pages was transformed from refills into a fully salable photo album (classifiable in heading 4820). The court also stated that the use of the pages was also transformed from loose refill pages to completed albums suitable for display on a customer's bookshelf, the primary purpose of a photo album. Finally, the court found that the combination of the various parts (cover, pages, binder, and label) results in an item having a new identity. Distinguishing the Uniroyal case discussed above, the court found that the pages in this case were not the "essence" of the photo albums. The court also considered the value added as a result of making the photo albums as support for the conclusion that the photo album pages were substantially transformed. The permitted changes under the applicable Part 102 tariff shift rule include a change to heading 4820 from any other heading, and the loose filler paper is classified outside of heading 4820. Thus, under the Part 102 rules the magnetic pages will be transformed into products of the country in which the albums were produced, consistent with the conclusion reached by the court in *M.B.I.*

Carlson Furniture Industries v. United States, 65 Cust.Ct. 474 (1970). In the United States, wooden chair parts imported from Japan were assembled and fitted together, glued, the joints steel-pinned, the legs cut to length and leveled, and, in some instances, the chairs upholstered and the legs fitted with glides and casters. The court held that the work performed on the imported articles by the importer was substantial in nature and more than the mere assembly of parts together. The

court further stated that the result of the assembly of the chair parts was the transformation of the parts into a "functional whole"—which resulted in a new and different article of commerce. The court concluded that the importer was the "ultimate purchaser" of the imported articles, so that the marking of the country of origin on the containers in which such articles were imported was deemed sufficient to meet the statutory marking requirements. The Part 102 rules are consistent with this court decision. In this case, the goods for which country of origin had to be determined were "chairs", which are classified under subheadings 9401.10 through 9401.80 for which the following § 102.20 tariff shift rule is prescribed: A change to subheading 9401.10 through 9401.80 from any subheading outside that group, except from subheading 9403.10 through 9403.80, and except a change from subheading 9401.90 or 9403.90 when that change is pursuant to GRI 2(a). The Court in *Carlson Furniture* also found that the imported articles were "not chairs in unassembled or knocked-down condition", but were "at best the wooden parts which go into the making of chairs". Since the chair parts were assembled into finished chairs by the U.S. importer, the change in classification from the imported chair parts to finished chairs did not occur pursuant to GRI (2)(a). Consequently, the assembly and other processing of the chair parts, classifiable under 9401.90, would be treated as a substantial transformation under the Part 102 rules.

Midwood Industries, Inc. v. United States, 313 F.Supp. 951 (Cust.Ct. 1970). In this case, steel forgings manufactured in West Germany, England, or Italy were imported into the United States where they were manufactured into flanges and fittings. The purpose of the fittings was to connect pipes of matching sizes. To that end, the forgings were faced, bored, threaded or bevelled, drilled, or spot-faced, or they were heated and one end was reduced in size and diameter by compression, excess steel was removed, and the ends were aligned, trimmed, and bevelled for welding purposes. In finding that the steel forgings were substantially transformed in the United States, the court drew a distinction between consumer and producer goods, stating that the imported articles are "not in fact used by the consumer in such state of manufacture and are not capable of use by the consumer in that state." The Part 102 rules do not stipulate that all forgings manufactured into flanges and fittings undergo a substantial transformation. The Court of

International Trade has not employed the consumer-good-versus-producer-good analysis used by the Customs Court in *Midwood*. Nor does Customs believe that the court is bound to follow that reasoning. *Cf. Algoma Steel Corp., Ltd. v. U.S.*, 865 F.2d 240, 243 (Fed.Cir. 1989). In *Midwood*, the Customs Court based its decision on an analysis of the facts presented regarding the manufacturing processes employed by a single pipe fittings company circa 1970 as well as the legal arguments presented in that case. The court noted that it did not need "to determine whether or not the processes employed" at the plaintiff's plant were "generally prevalent throughout any segment of the industry in the United States." *Midwood*, 313 F.Supp. at 956. Customs believes that the *Midwood* result would have been consistent with the proposed rules set forth in this document had it been presented as such. Consequently, Customs is confident that the Court of International Trade will sustain the uniform rules of general applicability contained herein, which are relevant to current industry practices and are entirely consistent with the general principles enunciated by the court.

National Hand Tool Corp. v. United States, 16 CIT 308 (1992). The articles involved in this case were nine kinds of components of hand tools which were further processed and assembled in the United States. The components were either cold-formed or hot-forged in Taiwan into their final shape before importation. Some of the tools underwent a heat treatment, were reshaped by bending, or were further machined by knurling in the United States, and other articles were electroplated in the United States. The various components were then assembled in the United States to produce the finished tools. The court found that there was no name change and that the character of the imported articles remained unchanged after heat treatment, electroplating, and assembly. The court stated that although there may be changes in the characteristics of the material, they did not change the character of the articles. The court also found no change in use as a result of the processing in United States. Finally, the court found that there was no reason to find a substantial transformation on the basis of the value-added in the United States. Accordingly, since the operations performed in the United States did not result in a substantial transformation, the court held that the imported articles must be marked to indicate the country of origin pursuant to 19 U.S.C. 1304. The Part 102 rules are

totally consistent with the application of the substantial transformation principle in this case, not only in the case of hand tools but also as applied to other products involving similar processing operations.

2. Subheading 9802.00.80 and Products of the United States

This document sets forth, without change, the proposal contained in the January 3, 1994, notice of proposed rulemaking to amend § 10.14 of the Customs Regulations to provide for application of the Part 102 rules for purposes of determining when imported foreign materials are substantially transformed in the United States so as to be considered products of the United States and thus not subject to duty under subheading 9802.00.80, HTSUS, when exported for assembly abroad and then returned to the United States. The Part 102 rules are totally consistent with the following court decision which involved substantial transformation for purposes of determining country of origin in connection with item 807.00, TSUS (the predecessor to subheading 9802.00.80, HTSUS).

Data General Corporation v. United States, 4 CIT 182 (1982). The court considered the question of whether programming a programmable read only memory (PROM) imported into the United States constitutes a substantial transformation. The court analyzed the processing in terms of the name, character, and use test. The court found that there was a change in name in that a PROM when programmed is no longer a PROM and is sometimes referred to as a read only memory (ROM). The court found that there was also a change in character as a result of the programming which changed the pattern of interconnections with the PROM. According to the court, a distinct physical change was effected in the PROM by the opening or closing of the fuses. Citing *Uniroyal*, the court stated that the "essence" of the article, its pattern of interconnections or stored memory, was established by the programming. The court also noted that there was a change in use in that the PROM had no function or use except for programming. The court analogized programming a PROM to assembling the components on a printed circuit board, which is cited in 19 CFR 10.14(b) as an example of substantial transformation. Therefore, the court held that programming the PROM resulted in a substantial transformation into a "fabricated component" which was a product of the United States for purposes of item 807.00, TSUS. The result reached in this case is reflected in

the Part 102 rules since the applicable tariff shift rule (subheadings 8541-8542) allows a change to any programmed chips from any unprogrammed.

3. Application of Most-Favored-Nation Duty Rates

The Part 102 rules are consistent with the court's application of the substantial transformation principle in the following case which involved the question of whether the most favored-nation duty rate (as opposed to the higher column 2 duty rate) should be applied to the imported merchandise at issue.

Coastal States Marketing, Inc. v. United States, 646 F. Supp. 255 (CIT 1986). The court held that mixing gas oil from the Soviet Union and fuel oil from Italy in Italy does not result in a new and different article of commerce so that the mixture becomes a product of Italy. The court concluded that there was no change in the appearance, character, identity, or use of the Russian oil to warrant the conclusion that the imported blend was solely a product of Italy. Furthermore, the court stated that the essential character of the Russian component as a fuel oil used primarily for heating remained unchanged. The court found that "although a change in tariff classification is certainly not controlling * * * the same classification treatment of the products * * * is some indication that the imported blend was not a new and different product." Accordingly, the Part 102 rules do not allow a change of origin when fuel oil and gas oil, both of which are classified in heading 2710, are simply blended together.

4. Voluntary Restraint Arrangement Cases

On balance, and as explained below, the Part 102 rules are consistent with the following cases involving substantial transformation for purposes of determining origin in the trade policy area. These cases involved voluntary restraint arrangements that the United States had with various countries regarding the exportation of steel products to the United States.

Ferrostaal Metals Corporation v. U.S., 664 F.Supp. 535 (CIT 1987). In New Zealand, full hard cold rolled steel sheet imported from Japan was annealed and galvanized by a process known as "continuous hot-dip galvanizing" to produce galvanized steel sheet. The court held that the hot-dipped galvanized steel sheet was a new and different article of commerce when compared to the full hard cold rolled steel sheet. In making this determination, the court found that the

processing of the hard cold rolled steel sheet into hot-dipped galvanized steel sheet results in a change in name, character, and use. The court noted the change in name, that is, from full hard cold rolled steel sheet to continuous hot-dip galvanized steel sheet. The court also stated that the annealing and galvanizing process resulted in a change in character by significantly altering the mechanical properties and chemical composition of the steel. In addition, the court noted that cold-rolled steel cannot be used for the same purposes as steel that has undergone the hot-dip galvanizing process. The *Ferrostaal* opinion represents a trial court's resolution of a single, particular dispute involving a specific product and process. The case was not appealed. While the Court of International Trade's substantial transformation analysis in *Ferrostaal* remains relevant, Customs has not codified the specific result of *Ferrostaal* and does not propose it as a uniform rule of general applicability based on a comprehensive review of industry practices. Again, Customs believes that the *Ferrostaal* court would have reached the result contained in those rules had they been presented as such to the court. Moreover, Customs is confident that the Court of International Trade will sustain those rules based on an industry-wide analysis, notwithstanding the result that was reached based on the particular facts of a single case. *Cf. Algoma Steel Corp., Ltd. v. U.S.*, 865 F.2d 240, 243 (Fed. Cir. 1989).

Superior Wire v. United States, 867 F.2d 1409 (CAFC 1989). The Court of Appeals for the Federal Circuit affirmed the Court of International Trade decision that the process of drawing wire in Canada from wire rod produced in Spain is not a substantial transformation. The lower court had employed the traditional name, character, and use test, finding that, although there is a name change from wire rod to wire, there is no change in character or use when wire rod is drawn into wire. Therefore, the court held that wire drawn in Canada from Spanish wire rod was not substantially transformed for purposes of determining the country of origin under the voluntary restraint arrangement between the United States and Spain, thus resulting in Spain remaining the country of origin of the imported steel. The Part 102 rules are consistent with the court's application of the substantial transformation principle in this case: the specific § 102.20 tariff shift rule applicable to such goods provides for a change to heading 7223 (wire) from any

other heading, except from heading 7221 through 7222 (wire rod).

5. Generalized System of Preferences Cases

Although the Generalized System of Preferences (GSP) statute currently requires that the imported article must be product of a designated beneficiary developing country (BDC) in order to be eligible for GSP duty-free treatment, all of the court decisions to date involved Customs entries pre-dating that statutory provision and thus focused only on the GSP statutory preference standard that 35 percent of the value consist of materials the product of a BDC plus direct costs of processing performed in the BDC. These cases remain relevant as examples of substantial transformation analysis to the extent that the question addressed by the court did not involve the origin of the final product exported from the BDC but rather involved whether a material imported into the BDC was substantially transformed into a new and different intermediate article of commerce in the BDC before being used to make the good exported from the BDC, so that its value could be counted toward the 35 percent requirement. Although the court in each of the cases discussed below did not specifically address the issue of the origin of the final article exported to the United States, it appears both that all of the involved goods as exported to the United States were products of the BDC and that the same conclusion would be reached under the Part 102 rules.

Texas Instruments v. U.S., 681 F.2d 778 (CCPA 1982). The court held that silicon chips, wire and lead strips, which were imported into a BDC where they were assembled into integrated circuits and photodiodes, and where the chips had first to be severed from silicon slices prior to the assembly process, were substantially transformed into "materials produced in the BDC" which were then used in the production of electronic camera parts exported to the United States.

Azteca Milling Co. v. U.S., 703 F.Supp. 949 (CIT 1988), and *F.F. Zuniga Refractorios Monterrey*, 996 F.2d 1203 (CAFC 1992). These GSP cases involved the issue of whether there existed a new and different article of commerce versus "materials in process advancing toward the finished product". In *Azteca Milling* which involved corn flour imported into the United States, the court found that the production of corn flour nixtamal and masa from imported corn did not result in a substantial transformation into new and different articles of commerce, since the nixtamal and masa

were "clearly recognizable as processed corn." Similarly, the court in *Zuniga* found that the production of a casting slip for kiln furniture from imported dry materials did not result in a substantial transformation into new and different articles of commerce since the casting slip was only a "transitional stage of a material in process, advancing toward the finished product", the kiln furniture. The casting slip, like the nixtamal and masa in *Azteca*, was not found by the court to be "readily susceptible of trade".

Torrington v. United States, 764 F.2d 1563 (CAFC 1985). The court held that the production of swage needle blanks from imported wire and the further production of sewing machine needles from swage blanks represented a double substantial transformation of the imported wire. The Part 102 rules support the trial court's first finding of a substantial transformation—the transformation of wire into unfinished sewing machine needles—but not the second finding regarding the transformation from unfinished to finished needles. The appellate court's decision upholding the second substantial transformation found by the trial court was based on a rare citation of the producer good-consumer good standard of *Midwood*, which the courts have not favored. Moreover, the court's decision appears to have been influenced heavily by its desire to effectuate what it believed to be the intent of Congress. In sustaining the trial court's finding of double substantial transformation, the court noted the Congressional intent behind the GSP statute, which was to foster industrialization of BDCs, and focused on the "actual manufacturing process by which the intermediate article becomes the final product". In this regard, the court concluded that in light of the significant manufacturing process, there was not a "mere pass-through" operation in the BDC.

6. Textile Cases

The court decisions involving substantial transformation of textiles and textile products were superseded by the rules of origin established under § 12.130 of the Customs Regulations (19 CFR 12.130) for textiles and textile products subject to the U.S. textile import program. The authority to promulgate these rules was upheld by the court in *Mast Industries v. Regan*, 596 F.Supp. 1597 (CIT 1984). In that case, the court found that the promulgation of § 12.130, which was at the direction of the President and which set forth rules for the determination of country of origin for textiles and textile

products subject to import quotas, was fully in accordance with law. See also *Target Sportswear, Inc. v. United States*, *supra*. This document republishes the January 3, 1994, proposals to delete paragraphs (d) and (e) from § 12.130 and to amend paragraph (b) thereof to cross-refer to the Part 102 rules as Customs in T.D. 90-17 made those § 12.130 rules generally applicable for textiles and textile products. Thus, the Part 102 rules track the principles of, as well as the origin results that would be reached under, § 12.130 in the case of textiles and textile products.

Proposed Changes to the Interim and Proposed Texts and Proposed Delayed Effective Date

A. Proposed Amendments to the Interim Rules

1. Part 102 General Origin Criteria

Section 102.11—General Rules

It is proposed to revise paragraph (d) of interim § 102.11 in part to simplify the text but principally in order to ensure that paragraph (d) will provide for an origin determination in all cases in which origin cannot be determined under paragraph (a), (b) or (c). Customs notes that the interim paragraph (d) text in some cases will not effectuate an origin determination when the good in question last undergoes production in a country where only minor processing was performed with respect to that good. For example, various furniture parts classifiable under subheading 9403.90, HTSUS, enter Country A from various countries; in Country A, the parts are collected and packaged into unassembled boxes of desks and tables classifiable under subheading 9403.30, HTSUS, pursuant to GRI 2(a) which are then shipped to Country B. The interim § 102.20 tariff shift rule for goods classified in subheading 9403.30 provides for "a change to subheading 9403.10 through 9403.80 from any subheading outside that group, except from subheading 9401.10 through 9401.80, and except a change from subheading 9401.90 or 9403.90 when that change is pursuant to GRI 2(a)." In the stated example this tariff shift rule will not be met because the change in classification indeed does occur as a result of classification of the collection of furniture parts as the unassembled desks and tables pursuant to GRI 2(a); thus, origin cannot be determined under interim § 102.11(a)(3). If no single component can be found to impart the essential character to the desks and tables, then origin of the goods also cannot be determined under interim § 102.11 (b). Moreover, since the desks

and tables are not classified as sets, mixtures or composite goods under the HTSUS, origin cannot be determined under interim § 102.11(c). Finally, since the parts came into Country A from various countries and only minor processing (packaging) was performed in Country A to make the goods, the origin of the goods cannot be determined under interim § 102.11(d)(1) or (2). Thus, no determination of origin can be achieved under the interim texts with regard to the good described in this example.

In order to address the problem outlined above, the proposed revision of paragraph (d) as set forth below incorporates the following three subparagraphs: subparagraph (1) covers a good produced only as a result of minor processing and provides in such a case that the country of origin of the good is the country or countries of origin of each single material that merits equal consideration for determining the essential character of the good; subparagraph (2) covers a good produced by simple assembly, where the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, and provides in such a case that the country of origin of the good is the country of origin of those parts; and subparagraph (3) covers cases in which the country of origin of a good cannot be determined under paragraph (d)(1) or (d)(2) and provides that in such cases the country of origin of the good is the last country in which the good underwent production.

Removal of § 102.14—Goods Returned

Based on comments received and as a result of further internal review, Customs has reconsidered the position stated in T.D. 94-4 that U.S. Note 2(a), Subchapter II, Chapter 98, HTSUS, has application for general country of origin purposes. In light of this change in position, it is proposed to remove this section (see also the proposed revision of interim § 102.19 discussed below).

Removal of § 102.16—Good and its Parts; Parts of Parts

It is proposed to remove interim § 102.16 which sets forth special origin rules where, for any of several specified reasons, a part of a good or a part of a part does not undergo an applicable change in tariff classification provided for in § 102.20. The experience of Customs in administering the interim NAFTA Marking Rules has shown that the hierarchical application of §§ 102.11 (b) through (d), coupled with the proposed change to § 102.11(d) discussed above, yield an appropriate

origin result that codifies the substantial transformation principle. Accordingly, Customs no longer believes that § 102.16 is necessary.

Section 102.17—Non-qualifying Operations

It is proposed to revise the introductory text of interim § 102.17 to clarify the intent that the section applies whenever the change in tariff classification or other condition specified in § 102.20 was met only as a result of one or more of the listed non-qualifying operations having been performed with respect to the good.

In addition, it is proposed to revise paragraph (e) of interim § 102.17 which specifies, as a “non-qualifying operation” for purposes of section 102.20, any process or work the sole object of which is demonstrated by a preponderance of evidence to be the circumvention of the Part 102 rules. Upon reconsideration of this provision, it is Customs view that this provision is not administrable since the text does not make clear how it is possible for a person to “circumvent” these rules. First, if the § 102.20 rule or any other Part 102 rule does not preclude a specific operation from being the means by which a foreign material satisfies a § 102.20 rule, any operation is deemed allowable under Part 102. Second, if a Part 102 rule specifically precludes a type of operation (for example, “simple assembly” or “dismantling or disassembly”) and it was only as a result of such an operation that the change in tariff classification requirement or other conditions specified for the foreign material under the § 102.20 rule were met, the § 102.20 rule is simply not deemed to have been satisfied. In either case, there could not have been a “circumvention” of the rules as a result of the operation, since either the Part 102 rules permitted the operation or, as a result of the operation, the Part 102 rules were not satisfied.

Nevertheless, to further protect against circumstances which may appear to be a “circumvention” of the spirit or intent of the Part 102 rules, Customs proposes to redraft paragraph (e) of § 102.17 to specify, as an additional “non-qualifying operation”, collecting parts that, as such, are classifiable in the same tariff provision as an assembled good pursuant to General Rule of Interpretation (GRI) 2(a), without any additional operation other than minor processing. Thus, no specified change in tariff classification will be deemed to have occurred if such change resulted solely from the act of collecting parts which are then classified under the tariff provision

applicable to the assembled good. If, on the other hand, in addition to the collecting of parts, processing constituting more than minor processing also occurred in the country in question, this rule would be inapplicable.

Section 102.18—Rules of Interpretation

It is proposed to revise paragraph (a) of interim § 102.18 in order to: (1) Simplify, and thus clarify the application of, the introductory text; (2) remove subparagraph (a)(1)(i) which refers to the collection of parts classified as an assembled good and thus would become redundant because it would be encompassed within the broader terms of proposed new § 102.17(e) as discussed above (which would apply to all tariff shift rules rather than to only those rules that specifically cite classification under GRI 2(a) as a basis for not allowing a specified change in tariff classification); (3) remove paragraph (a)(2) which would no longer be needed in view of the proposed removal of paragraph (a)(1)(i) from this section; and (4) simplify the remaining portion of paragraph (a) (subparagraph (a)(1)(ii) in the interim text) and remove therefrom the unnecessary reference to “a subassembly”.

In addition, it is proposed to revise paragraph (b) of interim § 102.18 in order to effect the following changes: (1) The removal of the undefined parenthetical reference to “self-produced materials” in interim subparagraph (b)(2); (2) the reversal of the order of interim subparagraphs (b)(1) and (b)(2); (3) in newly designated subparagraph (b)(1), the addition of new subparagraphs (b)(1)(i) and (b)(1)(ii) to clarify and illustrate, by way of a statement and an example in each case, the intended operation of the subparagraph (b)(1) rule; and (4) the simplification, and thus clarification, of the paragraph (b) text.

Section 102.19—NAFTA Preference Override

It is proposed to make some editorial modifications to the text of interim § 102.19, to designate that text as paragraph (a), and to add a new paragraph (b). New paragraph (b) is intended to facilitate the application of the appropriate NAFTA preferential duty rate under General Note 12(a), HTSUS, in the case of originating goods the origin of which is determined to be the United States under the Part 102 provisions. It should be noted that the term “Customs duty” used in this new paragraph (b) is intended to include merchandise processing fees which are treated as Customs duties under

§ 24.23(e) of the Customs Regulations (19 CFR 24.23(e)).

2. Section 102.20 Specific Rules

Customs proposes to make a number of amendments to the tariff shift rules and other requirements set forth in interim § 102.20. These proposed amendments, and the reasons therefor, are summarized below with reference to the HTSUS provisions and general types of goods involved.

Elimination of the Specific Rules Referring to "Substantial Transformation"

Customs proposes to amend the tariff shift rules for headings/subheadings 1901.90, 2103.90, 4823.20 through 4823.59, 4823.70 through 4823.90, 6811.90, 6812.90, 6814.90, 7010 through 7018, 7019.90, 7020, 8708.99, 9110, 9401.90, 9403.90, and 9606.21 through 9606.29, by eliminating in each case the rule which permits a specified change "if that change results in a substantial transformation." In administering the interim Part 102 rules Customs has determined that these specific statements in the rules are redundant and do not need to be included in § 102.20 in order to codify the substantial transformation principle. As a result of this proposal and the proposed removal of § 102.16 discussed above, the term "substantial transformation" would no longer appear in the Part 102 texts; accordingly, it is also proposed to remove the definition of "substantial transformation" in interim § 102.1(p).

Section II Note

It is proposed to amend the Note under Section II by adding the words "or from whole plants," after the words "slips or other live parts of plants,". This proposed change is intended to clarify, consistent with the definition of "a good wholly obtained or produced" in interim § 102.1(g), that when an agricultural product is grown and harvested from a plant that was transplanted from another country, the product has its origin in the country in which the product was harvested.

Headings 0904-0910 (Spices)

It is proposed to delete the second tariff shift rule for headings 0904-0910, which provides for a change to crushed, ground, or powdered products of heading 0904 through 0910 (principally spice products) from within Chapter 9, if put up for retail sale. Customs is of the opinion that processing raw spices to create crushed, ground or powdered spices, whether or not accompanied by cleaning, merely changes the form of the

spice and does not result in any significant change in the name, character or use of the product. This view is consistent with previous Customs rulings which have held that the processing of raw cheese into grated cheese packed for retail sale does not constitute a substantial transformation.

Subheading 1517.90 (Vegetable Oils Consisting of Preparations and Mixtures)

The interim rule requires a change from any other chapter. It is proposed to amend this rule by adding a second tariff shift rule which would allow a change from any other heading so long as the resulting product contains no more than 60 percent by volume of a single oil ingredient from a single country. This change would make the rule for mixtures of different types of oils consistent with the rule for a similar type of product, mixtures of different types of fruit juices (heading 2009.90), and would incorporate the results reached under the traditional application of the substantial transformation rule with respect to such types of products.

Headings 4104-4107 (Leather)

Based both on a comment and on further review by Customs, it is proposed to delete the second tariff shift rule which allows a change to finished leather of heading 4104 through 4107 from wet blue hides or leather. This proposed change reflects the following considerations: (1) There is no established definition of the term "finished leather" and, in fact, the meaning of the term can vary according to the end use of the goods; and (2) the processes necessary to change wet blues to finished leather can vary and may not, in all cases, result in a change in the country of origin, as reflected in rulings issued by Customs.

New Chapter 42 Note

It is proposed to add a Note to the Chapter 42 rules to ensure that a single country of origin always will be identifiable in the case of textile goods. This new Note is modeled on Note 3 to the Section XI rules and thus also reflects the proposed amendment to that Note as discussed below.

Headings 4810-4814 (Coated Paper)

Customs proposes to revise this interim tariff shift rule by dividing it into separate rules for heading 4810, subheading 4811.10 through 4811.31, subheading 4811.39, subheading 4811.40 through 4811.90, and headings 4812 through 4814. Of these five proposed new rules, only the proposed

rule for subheading 4811.39 would constitute a substantive change from the current interim rule for headings 4810 through 4814. The proposed rule for subheading 4811.39 would disallow a change from paper of heading 4804 to paper that is only "coated, impregnated or covered with plastics". This is consistent with Customs rulings which generally have held that laminating, coating or encapsulating does not result in a substantial transformation.

Subheadings 4823.70-4823.90 (Other Paper, Paperboard, etc. Products)

It is proposed to amend the tariff shift rule which would remain (if the "substantial transformation" rule is eliminated as proposed above) to specify a change "from any other subheading, including another subheading within that group" rather than a change "from any other chapter". This amendment would result in a more liberal rule which reflects the conclusions reached by Customs under the traditional approach.

Section XI (Textiles)

The proposed amendments to the interim § 102.20 specific rules applicable to textiles as discussed below are intended to conform the rules in question to the practice of, and positions taken by, Customs in the case-by-case administration of § 12.130 of the Customs Regulations (19 CFR 12.130):

a. Note (1)d

In response to a comment, it is proposed to replace the word "body" by the words "major parts" and to delete the words "together with its sleeves and/or legs", in order to preclude interpretation of this Note as not applying to garments that have padding in the body and linings in the sleeves.

b. New Note (1)f

It is proposed to add a new Note (1)f to clarify the meaning of "minor embellishments" (see the proposed amendment to the specific rules applicable to goods of headings 6302 and 6304 as discussed below).

c. Note 3

It is proposed to amend Note 3 by adding a sentence at the end to cover a case where more than one component determines classification or where the component that determines classification is attributable to more than one country. This new sentence provides that in such cases the country of origin shall be the last country in which the good underwent production other than minor processing. Customs believes that this amendment is

necessary for purposes of administration of the U.S. textile import program which makes no provision for multiple countries of origin.

d. Heading 5105 (Wool Tops)

It is proposed to add a second tariff shift rule for headings 5101–5105 in order to reflect the Customs position that the processing of greasy wool into combed wool is a substantial transformation.

e. Heading 5609 (Articles of Yarn)

It is proposed to amend the tariff shift rule for heading 5609 to include, in the exception language, a reference covering headings 5604 and 5605 which include different types of yarns. This proposed change would reflect the Customs view that the assembly or other processing of such yarns into articles classifiable in heading 5609 does not constitute a substantial transformation.

f. Heading 5804 (Net Fabrics)

Customs has determined that, under certain circumstances, it is commercially feasible to convert made up nets of heading 5608 to netting of subheading 5804.10 by simple cutting, and Customs does not believe that such a tariff shift should confer origin. Accordingly, it is proposed to divide the interim heading 5804 tariff shift rules into two sets of rules, one for subheading 5804.10 and the other for the remainder of the heading, in order to add in the case of subheading 5804.10 an exception involving a change to that subheading from heading 5608.

g. Subheadings 5806.10–5806.39 (Narrow Fabrics)

It is proposed to amend the first tariff shift rule for subheadings 5806.10–5806.39 by adding heading 5801 to the listed exceptions. Heading 5801 provides for woven pile and chenille fabrics, and it is the position of Customs that the processing of those fabrics into goods classifiable in subheadings 5806.10–5806.39 does not constitute a substantial transformation.

h. Heading 5810 (Embroidered Fabric)

In response to several similar comments, it is proposed to rearrange, and revise the wording of, the two tariff shift rules for goods of this heading in order to conform to prior rulings regarding the weight and effect of the embroidery.

i. Heading 5903 (Coated Fabrics)

It is proposed to amend the first tariff shift rule for this heading by replacing the exclusion reference to subheadings “5806.31 through 5806.39” by a

reference to heading “5806”. This will have the principal effect of widening the reference to include woven pile fabrics which were inadvertently omitted from the exclusion language in this tariff shift rule.

j. Headings 6101, 6102, 6201 and 6202 (Assembled Garments)

In response to a comment, it is proposed to amend the third tariff shift rule for each of these headings in order to conform the wording to that used in other § 102.20 rules which specify a change “to assembled garments from unassembled parts”.

k. Subheadings 6103.21–6103.29, 6104.21–6104.29, 6203.21–6203.29 and 6204–21–6204.29 (Ensembles)

In response to a comment, it is proposed to add to each of these subheadings two new tariff shift rules in order to make the rules for suits (see, for example, the interim rules for subheadings 6103.11–6103.19) applicable to sets of garments (ensembles) that are essentially the same as suits.

l. Headings 6115–6117 and 6213–6214 (Shawls, Scarves, and the Like and Handkerchiefs)

In response to a comment, it is proposed to divide the interim tariff shift rule for headings 6115–6117 in order to set forth a separate rule for subheading 6117.10 which would allow a change from greige fabric to shawls, scarves, etc. by means of dyeing, printing, cutting and stitching. The proposed separate rules set forth in this document for headings 6115–6116 and for subheadings 6117.20–6117.90 reflect the terms of the interim rule.

In response to the same commenter, it is proposed to amend the interim rule for headings 6213–6214: (1) to remove the knit-to-shape proviso which does not appear to be appropriate for the type of goods covered; and (2) to add a second tariff shift rule for the same reason stated above for subheading 6117.10.

m. Heading 6205 (Shirts)

In response to a comment, it is proposed to delete the word “shoulder” before “yokes” in the second and third tariff shift rules because (1) yokes on shirts by definition are only in the shoulder area and (2) this would conform the wording to the terminology used in the rules under headings 6105, 6106 and 6206.

n. Headings 6302 and 6304 (Bed Linen and Other Furnishings)

In response to a comment, it is proposed for each of these headings to add a second tariff shift rule to the interim paragraph (1) rule to reflect current Customs rulings. The proviso in each new rule, which requires at least cutting “finished fabric” on all sides and hemming “all cut edges” and “at least one other subsequent process”, clarifies the fact that fabric finishing operations are not considered and eliminates any uncertainty regarding the minimum amount of hemming that must be performed. The present view of Customs is that such minor embellishments should not be considered.

o. Heading 6303 (Curtains, Blinds and Valences)

In the second tariff shift rule, it is proposed to amend the proviso as follows: (1) to require “more than” (rather than “at least”) cutting on all sides “and” hemming the cut edges; (2) by removing the requirement for “a significant sewing or assembly operation”; and (3) by adding at the end the words “and with no consideration being given to minor processing”. Customs believes that the “minor processing” standard, which is defined in § 102.1(m), is preferable to the undefined “significant” standard; thus, processing which is other than “minor” should, by definition, be considered significant.

In addition, it is proposed to amend the third tariff shift rule by adding a reference to heading 5811 so as to include quilted fabrics in the listed exceptions since a good may contain a small amount of quilted fabric without being considered a “quilted article”.

p. Subheadings 6306.91–6306.99 (Awnings, Sunblinds and Camping Goods)

It is proposed to amend this tariff shift rule by adding language at the end of the proviso to clarify that minor processing may not be considered in determining whether the proviso conditions have been met.

q. Subheading 6307.90 (Made up Articles)

Customs believes that the interim tariff shift rule should be amended to prescribe that the sewing or assembly operation be “substantial” in amount rather than simply “significant”. While this proposed amendment appears to be minor and does not materially alleviate the subjectivity of the rule, Customs notes that it: (1) effectively changes the test for manufacturing or processing

operations from a qualitative standard to a quantitative standard, which is how Customs has been applying § 12.130; and (2) conforms the terminology used in the rule to the wording of § 12.130.

New Chapter 65 Note

It is proposed to add a Note to the Chapter 65 rules to ensure that a single country of origin always will be identifiable in the case of textile goods. As in the case of the new Note proposed for the Chapter 42 rules as discussed above, this new Note is modeled on Note 3 to the Section XI rules and thus reflects the proposed amendment to that Section XI Note as discussed above.

Headings 7010–7018 (Glass Articles)

With particular regard to lead crystal stemware of heading 7013, a commenter argued that the interim rules for headings 7010–7018 represent an abandonment of existing principles used for determining country of origin and such action would significantly harm its client's business. This commenter cited, as an example of an existing principle, Headquarters Ruling Letter (HRL) 734387 dated June 8, 1992, in which Customs held that the processing in Ireland of uncut lead crystal stemware "blanks" originating in various continental European countries "substantially transformed" the "blanks" into "formal crystal stemware", thus making Ireland the country of origin of the finished product.

Customs on a number of occasions has previously ruled on the question of whether extensive and intricate cutting of crystal constituted a substantial transformation. In HRL 734387 mentioned by the commenter, Customs ruled that crystal glassware "blanks" were substantially transformed into formal, elegant stemware suitable for indoor decoration by the extensive hand-cutting operations performed in Ireland. Customs based this determination on the fact that the hand-cutting operation was a substantial and intricate processing operation performed by highly skilled craftsmen which significantly changed the appearance and the shape of the stemware, imparting a decorative use to the glassware. Customs also noted that the glassware lost its identity as mere glassware and became a new article bought primarily for its appearance rather than for its utilitarian use. Similarly, in HRL 734283 dated June 16, 1992, Customs found that a crystal blank bowl, vase and basket were substantially transformed as a result of extensive and intricate hand-cutting done in Ireland. In another ruling, HRL

734653 dated October 22, 1992, Customs found that crystal blank bowls, which were hand-cut in the United States, were substantially transformed by the extensive operations performed there.

Most recently, Customs held in HRL 735310 dated April 6, 1994, that hand-cutting and acid polishing crystal stemware blanks in the United States resulted in a substantial transformation of the blanks. Customs found in this case that the hand-cutting and polishing operations were extensive and intricate and were performed entirely in a single country, the United States.

The foregoing cases are to be distinguished from HRL 731617 dated September 1, 1989, in which Customs held that the grinding and polishing of aluminum trays and bowls in Mexico did not substantially transform the articles. Customs held that neither the grinding nor the polishing changed the fundamental character or use of the articles. Rather, Customs concluded that it was the constituent material, aluminum alloy, coupled with the shape and design of the articles created by the U.S. sandcasting process, that imparted the essential character to the finished articles and determined their ultimate use.

Customs, however, also concluded that in certain cases the operation of cutting stemware did not result in a substantial transformation. One such case was HRL 733036 dated April 9, 1990, in which Customs found that there was no change in name, character or use caused by the simple hand cuts made to the glass in East Germany which, although attractive, did not increase the value of the stemware.

The case-by-case application of the substantial transformation standard in this area has been very controversial over the years. Therefore, in order to allow the results that would be achieved under the case-by-case approach while promoting objectivity and predictability of origin determinations involving these articles, Customs is proposing in this document to amend the interim rules prescribed for headings 7010–7018 to include a new rule that specifies a change from uncut and unpolished glassware blanks of heading 7013 to cut and polished glassware of that heading, provided that there has been a substantial amount of both cutting and polishing operations in a single country. As an example, Customs would consider the goods covered by HRL 735310, discussed above, as meeting this proposed new standard.

Also, upon further review of these rules, Customs has discovered that the specific rule applicable to goods

classified in heading 7011, which covers glass envelopes and parts thereof for electrical lamps, cathode-ray tubes or similar items, does not reflect Customs position regarding substantial transformation. This rule allows changes from glass profiles, classified in subheading 7003.30. In HRL 557387 dated October 1, 1993, Customs ruled that glass face plates for cathode ray tubes, classified in subheading 7011.20, which were produced in Mexico from Korean-origin glass profiles classified in subheading 7003.30, had not been substantially transformed into a product of Mexico. Customs concluded that "the essential form, shape and character of the glass product [the face plates] were determined by the manufacturing operation in Korea" for the production of the profiles. Since Customs continues to maintain the position stated in HRL 557387, it is proposed to modify the interim § 102.20 specific rules to disallow a change to heading 7011 from subheading 7003.30.

Finally, Customs has reconsidered the necessity for that provision contained in the interim rules for headings 7010 through 7018 which precludes a tariff shift from heading 7020. Customs believes that in order for such a change in tariff classification to occur, there would have to be either (1) a genuine creation of a new and different article having a new name, character or use, or (2) a tariff classification change resulting solely from a non-qualifying operation, such as a "change in end use" or "dismantling or disassembly", which pursuant to § 102.17 would not confer origin. Since the Part 102 rules already accomplish the purpose behind the limitation regarding a shift from heading 7020, it is proposed to remove that limitation. In addition, it is proposed to modify the interim rules to specifically allow a change from another heading within the group, because the same principles would apply in such a case.

Accordingly, in order to reflect the above considerations, it is proposed to replace the interim rules for headings 7010–7018 with a new structure involving one rule for heading 7010, one rule for heading 7011, and two rules for headings 7012–7018.

Subheadings 8301.10–8301.50 (Padlocks, Locks, Clasps and Frames)

It is proposed to amend the tariff shift rule for these subheadings in order to rectify the incorrect reference "8301.40" which should read "8301.50" so as to correspond to the subheadings covered in the "HTSUS" column.

Section XVI—Note

This note, which disallows tariff changes within Chapters 84 and 85 occurring only as a result of the application of GRI 2(a), would no longer appear necessary since the proposed amendment to interim § 102.17(e), as discussed above, would accomplish the same purpose. Accordingly, it is proposed to delete this note.

Subheading 8401.20 (Machinery and Apparatus for Isotopic Separation)

It is proposed to modify the text of the interim tariff shift rule, and to add a second tariff shift rule, in order to clarify that no change is allowed from parts of subheading 8401.20 to parts of the same subheading. Thus, under the proposed new standard for subheading 8401.20, a change from parts of subheading 8401.20 is allowed only if the change is to completed machinery and apparatus of that subheading.

Subheading 8415.90 (Parts of Air Conditioning Machines)

The interim rule allows a change to this subheading "from any other heading, except a change resulting from a simple assembly." It is proposed to revise this rule to allow a change to this subheading "from any other subheading, except when the change is from heading 7411, 7608, 8414, 8501, and 8535 through 8537 as a result of merely a simple assembly." Under this proposed change, the simple assembly limitation is specified only with reference to headings from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o).

Subheadings 8470.10–8471.91 (Calculating, Accounting and ADP Machines)

The interim rule allows a change to these subheadings "from any other subheading, except when resulting from a simple assembly." It is proposed to revise this rule to allow a change to these subheadings either "from any subheading outside that group, except from heading 8473" or "from any subheading within that group or from heading 8473, provided the change is not the result of merely a simple assembly." Under this proposed change, the simple assembly limitation is specified only with reference to that heading from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o). Thus, under the proposed rule, changes would be allowed to subheading 8470.10 through 8471.91 from any subheading outside that group, except heading 8473.

Subheadings 8471.92–8472.90 (Other Machines for Transcribing or Processing Coded Data and Other Office Machines)

The interim rule allows a change to these subheadings "from any other subheading, except when resulting from a simple assembly." It is proposed to revise this rule in the same manner, and for the same reasons, as stated above for subheadings 8470.10–8471.91.

Heading 8473 (Parts and Accessories of Machines of Headings 8469–8472)

The interim tariff shift rule provides for a change to this heading "from any other heading, except heading 8501, when resulting from a simple assembly." Upon a further review, Customs has identified other provisions from which a change to heading 8473 could possibly result merely from a simple assembly as defined in § 102.1(o). Therefore, it is proposed to revise this rule to allow a change to this heading "from any other heading, except when the change is from heading 8414, 8501, 8504, 8534, 8541, or 8542 as a result of merely a simple assembly."

Subheadings 8474.10–8474.80 (Machinery for Sorting, Grinding, etc.)

The interim rule allows a change to these subheadings "from any other subheading, except when resulting from a simple assembly." It is proposed to revise this rule to allow a change to these subheadings either "from any subheading outside that group, except heading 8501" or "from a subheading within that group or heading 8501, provided the change is not the result of a simple assembly." Under this proposed change the simple assembly limitation is specified only with reference to those tariff provisions from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o), in consideration of the fact that the machinery in this group is very similar and frequently consists of little more than a motor with some form of attachment.

Subheadings 8482.10–8482.80 (Bearings)

A commenter cited HRL 083455 dated September 6, 1989, which held that the assembly of a tapered roller bearing was a simple assembly that did not result in a substantial transformation; therefore, the country of origin was held to be Romania where the cup and cone were manufactured. This commenter noted that although the second tariff shift rule under subheadings 8482.10–8482.80 is not a total departure from this ruling since the rule provides for bearings with domestic inner and outer races, nevertheless, this tariff shift rule is

inconsistent with the ruling insofar as it allows for assemblies of parts which incorporate only domestic balls/rollers. Another commenter asserted that the rollers or balls represent a small percentage of the value (5 to 10 percent of the cost of production) and cited a finding by the Commission of the European Communities that the process or operations which result in the manufacture of balls or rollers or needle bearings and cages are of minor importance compared with the manufacture of the inner and outer rings and may be disregarded for the purposes of defining the origin of roller bearings.

In light of both the imputed minimal value of the balls/rollers and the fact that the above-cited ruling held that the cup and cone provide the essential character of the bearing, it is proposed to amend the second tariff shift rule for goods of subheadings 8482.10–8482.80 to not allow origin to be based upon the country where the balls and rollers are made.

Subheading 8512.40 (Windshield Wipers, Defrosters and Demisters)

The interim rule allows a change to this subheading "from any other subheading, except when resulting from a simple assembly." It is proposed to revise this rule to allow a change to this subheading "from any other subheading, except when the change is from subheading 8512.90 or heading 8501 as a result of a simple assembly." Under this proposed change, the simple assembly limitation is specified only with reference to those tariff provisions from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o).

Subheadings 8517.10–8517.82 (Telephone and Telegraph Apparatus)

The interim rule allows a change to these subheadings "from any other subheading, including another subheading within that group, except when resulting from a simple assembly." It is proposed to revise this rule to allow a change to these subheadings either "from any subheading outside that group, except from subheading 8517.90" or "from subheading 8517.90, provided the change is not the result of a simple assembly." Under this proposed change, the simple assembly limitation is specified only with reference to that subheading from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o).

*Subheadings 8528.10–8528.20
(Television Receivers)*

The interim rule allows a change to these subheadings "from any other subheading, including another subheading within that group." Thus, the interim rule allows a change from television tubes. Customs believes that the television tube may determine origin for some television sets. Accordingly, it is proposed to add an exclusion for television tubes (subheadings 8540.11 through 8540.12).

Subheadings 8531.10–8531.80 (Other Electric Sound or Visual Signaling Apparatus)

The interim rule allows a change to these subheadings "from any other subheading, including another subheading within that group, except when resulting from a simple assembly." It is proposed to revise this rule to allow a change to these subheadings "from any other subheading, including another subheading within that group, except when the change is from subheading 8531.90 as a result of a simple assembly." Under this proposed change, the simple assembly limitation is specified only with reference to that subheading from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o).

Headings 8541–8542 (Semiconductor Devices and Integrated Circuits)

It is proposed to modify the second and third interim tariff shift rules for these headings. The proposed change to the second rule would clarify that, under this rule, a change from an unmounted chip, die or wafer of heading 8541 or 8542 is allowed only if the change is to a mounted chip, die or wafer of heading 8541 or 8542. With regard to the third tariff shift rule, which refers to a change "to any programmed chips from any unprogrammed chips", the proposed change is intended to align the rule more closely with the court decision upon which the rule was based (*Data General Corporation v. United States*, 4 CIT 182 (1982), discussed above, in which the court specifically held that the programming of PROMs is a substantial transformation).

Headings 9101–9107 (Clocks and Watches) and Headings 9108–9109 (Finished Clock and Watch Movements)

Under the interim § 102.20 rule applicable to headings 9101–9107, a change in classification to that group from any other heading, except headings 9108–9110, will result in a country of

origin change. Headings 9108–9110 encompass complete and incomplete watch and clock movements, assembled and unassembled. Under the interim § 102.20 rule applicable to headings 9108–9109 (complete and assembled watch and clock movements), a change to either of these headings from any other heading, with the exception of heading 9110, will effect a country of origin change. Heading 9110 includes: complete watch and clock movements, unassembled or partly assembled (movement sets); incomplete watch or clock or watch movements, assembled; and "rough" watch or clock movements (sets of unassembled parts of the type described in Additional U.S. Note 1(g)).

A commenter stated that since, under current international practice, the movement will often originate in one country or in several countries while assembly of the watch or clock may take place in another country, country of origin will not be determined on the basis of the interim § 102.20 tariff shift rule applicable to watches and clocks of headings 9101–9107. With respect to finished movements of headings 9108–9109, this commenter was similarly of the opinion that the specified interim § 102.20 tariff shift rule will frequently be inapplicable since parts of movements classified under heading 9110 often originate in one country while the movement may be assembled in a second country. This commenter argued that the interim rules do not reflect commercial reality because substantial assembly operations may take place in the country where the movement is assembled.

It has been the longstanding position of Customs that the country of origin of a watch or clock is the country of manufacture of the watch or clock movement. The addition of the hands, dial, case, or watchband add definition to the watch but do not change the character or use of the watch or clock movement which is the "guts" of the time piece. See, for example, HRL 735197 dated January 4, 1994. This Customs position is based on the determination that the last substantial transformation of a finished watch or clock is the assembly of the movement. The interim § 102.20 rule applicable to watches and clocks (the rule for headings 9101–9107) was intended to track current practice, and does so, with the exception noted below. The interim § 102.20 rule applicable to complete movements (the rule for headings 9108–9109) also essentially followed present practice, with the exception noted below, since incomplete or partial movements encompassed by heading

9110 are the "guts" of the complete movement.

Customs notes, however, that heading 9110 also includes "complete watch or clock movements, unassembled" and "rough" watch or clock movements. Since under current practice Customs has repeatedly held that the assembly of individual parts to create a movement (or other similar good of heading 9110) results in a substantial transformation (see, for example, HRL 733533 dated August 3, 1990), it is apparent that the exception language in the interim § 102.20 rules for watches and clocks of headings 9101–9107 and for complete and assembled movements of headings 9108–9109 does not reflect this practice.

Accordingly, it is proposed to amend the § 102.20 rules for clocks and watches and for complete and assembled movements by adding in each case a second rule to allow changes from complete movements, unassembled (movement sets), of subheadings 9110.11 or 9110.90, or from rough movements of subheading 9110.19 or 9110.90.

Subheadings 9404.10–9404.30 and 9404.90 (Bedding and Similar Furnishings)

It is proposed to replace the § 102.20 listings for subheadings 9404.10–9404.30 and 9404.90 by the following: (1) subheadings 9404.10–9404.29, the tariff shift rule for which would be in substance the same as the interim rule prescribed for subheadings 9404.10–9404.30; and (2) subheadings 9404.30–9404.90, the tariff shift rule for which would, in the case of sleeping bags, comforters, pillows, and similar filled articles, allow a change in the country of origin as a result of the insertion of down and/or feathers but not as a result of the insertion of other materials. In addition, it is proposed to add a Note to the Chapter 94 rules which would set forth a country of origin rule for goods of subheadings 9404.30 through 9404.90 which do not meet the appropriate tariff shift rule specified for those subheadings.

3. Part 134

Section 134.32

In § 134.32 of the Customs Regulations (19 CFR 134.32), it is proposed to remove paragraph (r) (which was adopted in T.D. 94–4 in order to add an exception to marking requirements in the case of non-textile U.S. goods that are exported and returned after repairs or alterations performed abroad). In light of the proposed removal of interim § 102.14 as discussed above, Customs believes that

this paragraph would no longer be appropriate or necessary.

Section 134.43

T.D. 94-4 amended § 134.43 of the Customs Regulations (19 CFR 134.43) by adding a new paragraph (e) which prescribed specific methods of marking goods covered by interim § 102.14. In light of the proposed removal of interim § 102.14 as discussed above, Customs proposes to remove this paragraph (e) which would no longer appear necessary or appropriate.

B. Proposed Changes to the Proposed Regulatory Amendments

As stated above, the purpose of this document is also to republish all of the proposed regulatory amendments contained in the January 3, 1994, notice of proposed rulemaking in order that certain changes thereto may be proposed with opportunity for public comment thereon. The changes to the January 3, 1994, proposals reflected in this document are discussed below.

Elimination of Proposed Amendment to § 4.80b

The January 3, 1994, notice of proposed rulemaking included a proposal to amend § 4.80b of the Customs Regulations (19 CFR 4.80b) by adding at the end of paragraph (a) a sentence stating that the Part 102 rules apply for purposes of determining whether merchandise is manufactured or processed into a new and different product. On further review, Customs has determined that this proposed amendment should not be made.

The Jones Act (46 U.S.C. App. 883), pursuant to which § 4.80b is promulgated, is designed to reserve the coastwise trade for qualified U.S. vessels, a purpose which is not necessarily related to the origin of the goods involved in such trade. Thus, the term "new and different product" as used in § 4.80b relates only to the criteria for deeming merchandise not to have been "transported coastwise" for purposes of the Jones Act. Customs has not interpreted the § 4.80b language to be synonymous with the term "substantial transformation", that is, the requirement that an article be subjected to a processing that results in a "new and different article of commerce, having a new name, character and/or use" different from that which it originally possessed. For example, pursuant to T.D. 91-32 and several rulings issued in accordance with this T.D., Customs has established a practice under § 4.80b to determine, solely on the basis of whether there has been a change in ASTM grade, whether a "new

and different product" results from a fuel oil blending operation. Such a minimal change has not been ruled sufficient in itself to effect a "substantial transformation".

Accordingly, the proposed amendments set forth in this document do not include a proposal to amend § 4.80b.

Removal of § 10.22

Section 10.22 of the Customs Regulations (19 CFR 10.22) provides that for all assembled goods which are "entitled to" (whether or not they are in fact the subject of a claim for) a duty allowance under subheading 9802.00.80, HTSUS, the country of assembly is the country of origin of such goods for marking purposes. Thus, § 10.22 operates in practice as an exception to the country of origin marking requirements of Part 134 of the Customs Regulations.

Subheading 9802.00.80 duty treatment can be properly applied to assembled goods having only a few U.S. components, with most of the other components originating in countries other than either the United States or the country of assembly. In such a case, the true country of origin as determined under the Part 102 rules may be one of those other foreign countries, whereas by application of § 10.22 the country of origin for marking purposes would be the country of assembly. Thus, if the regulatory amendments set forth in the January 3, 1994, notice of proposed rulemaking and republished in this document (the basic intent of which is to result in uniform application of the rules of origin contained in Part 102) are adopted as a final rule, retention of § 10.22 could lead to incorrect or inconsistent country of origin determinations and country of origin marking. Accordingly, Customs proposes in this document to remove § 10.22.

Additional Amendment to § 177.22(a)

The January 3, 1994, notice of proposed rulemaking included a proposed amendment to § 177.22(a) of the Customs Regulations (19 CFR 177.22(a)) which defines "country of origin" for purposes of government procurement country of origin determinations. This proposed amendment consisted of adding at the end thereof a sentence stating that the expression "wholly the growth, product, or manufacture" refers to articles wholly obtained or produced within the meaning of interim § 102.1(g).

In response to a comment from the Office of General Counsel, General Services Administration (GSA),

Customs is proposing to revise § 177.22(a) in order to also make reference to use of the Part 102 rules for determining when there is a "new and different article" for purposes of that section. This provision would be similar to the proposals to amend §§ 10.176 and 10.195 of the Customs Regulations (19 CFR 10.176 and 10.195) as contained in the January 3, 1994, notice of proposed rulemaking and as set forth below. Customs also notes that, as stated to Customs by the GSA, this additional amendment will be consistent with Article 1004 of the NAFTA which requires that, if the parties apply the marking rules established pursuant to NAFTA Annex 311 in their normal course of trade (as Customs is proposing in this document to apply the Part 102 rules), such rules will be applicable for NAFTA government procurement purposes.

C. Final Rule Delayed Effective Date

In consideration of the fact that the regulatory amendments set forth in the January 3, 1994, notice of proposed rulemaking, as republished in this document with the changes discussed above, would have the effect of making the Part 102 interim rules applicable for all country of origin determinations under the Customs and related laws, including for purposes of country of origin marking, Customs believes that, in keeping with the principle enunciated in *National Juice Products Association v. United States*, 10 CIT 48, 628 F.Supp. 978 (CIT 1986), it would be an appropriate exercise of administrative discretion in this particular case to solicit comments from the public regarding a proposed delayed effective date.

Although *National Juice Products* involved a change of Customs position effected through an interpretive ruling rather than through amendments to the Customs Regulations, and notwithstanding the fact that the Part 102 rules merely codify Customs' existing position regarding substantial transformation, Customs believes that the circumstances cited by the Court to justify a delayed effective date in that case would be no less applicable here.

Accordingly, it is proposed that, if Customs determines that the proposed amendments set forth in the January 3, 1994, notice of proposed rulemaking as republished in this document with the changes discussed above, together with the interim regulations published as T.D. 94-4 and the proposed changes thereto as set forth in this document, should be adopted as a final rule with whatever changes as may be necessary to address comments submitted by the

public, the regulatory changes incorporated in the final rule would become effective 90 days after the date of publication of that final rule document in the **Federal Register**. Comments from the public are invited on this proposal for a delayed effective date.

Comments

Before adopting the proposed amendments as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 12

Customs duties and inspection, Labeling, Marking, Reporting and recordkeeping requirements, Textiles and textile products.

19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

19 CFR Part 134

Country of origin, Customs duties and inspections, Imports, Labeling, Marking, Packaging and containers.

19 CFR Part 177

Administrative practice and procedures, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I), 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 citations for §§ 10.171–10.178 and §§ 10.191–10.198 continue to read as follows, and the specific authority citation for § 10.22 is removed:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Sections 10.171–10.178 also issued under 19 U.S.C. 2461 *et seq.*;

Sections 10.191–10.198 also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

2. Section 10.12 is amended by revising the last sentence of paragraph (e) to read as follows:

§ 10.12 Definitions.

* * * * *

(e) * * * If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed as provided in § 10.14(b).

3. Section 10.14 is amended by revising the text in paragraph (b) preceding the examples to read as follows:

§ 10.14 Fabricated components subject to the exemption.

* * * * *

(b) *Substantial transformation of foreign-made articles or materials.* Foreign-made articles or materials will become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. Substantial transformation occurs when under part 102 of this chapter, the country of origin of a good which is

produced in the United States from foreign materials is determined to be the United States.

* * * * *

4. Section 10.22 is removed.

5. Section 10.171 is amended by adding a new paragraph (c) to read as follows:

§ 10.171 General.

* * * * *

(c) *Wholly the growth, product, or manufacture defined.* For purposes of §§ 10.171 through 10.178, the expression "wholly the growth, product, or manufacture" refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

6. Section 10.176(a) is revised to read as follows:

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries.* Any article which is wholly the growth, product, or manufacture of a beneficiary developing country or of any two or more countries that are members of the same association of countries or which is a new or different article of commerce that has been grown, produced, or manufactured in a beneficiary developing country, and which is imported directly from such beneficiary developing country or member countries, may qualify for duty-free entry under the Generalized System of Preferences (GSP). However, duty-free entry under GSP may be accorded only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries that is treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)), plus the direct costs of processing operations performed in such beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time of its entry into the customs territory of the United States. For purposes of this section, a "new and different article of commerce" exists when under part 102 of this chapter, the country of origin of a good, which is produced in a beneficiary developing country from foreign materials, is determined to be that beneficiary developing country.

* * * * *

7. Section 10.191(b)(3) is revised to read as follows:

§ 10.191 General.

* * * * *

(b) Definitions.

* * * * *

(3) Wholly the growth, product, or manufacture. For purposes of § 10.191 through § 10.198, the expression "wholly the growth, product, or manufacture" refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

* * * * *

8. Section 10.195(a)(1) is amended by adding a sentence at the end to read as follows:

§ 10.195 Country of origin criteria.

(a) Articles produced in a beneficiary country. (1) * * * For purposes of this section, a "new and different article of commerce" exists when under part 102 of this chapter, the country of origin of a good, which is produced in a beneficiary country from foreign materials, is determined to be that beneficiary country.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.130 and 12.131 also issued under 7 U.S.C. 1854;

* * * * *

2. Section 12.130 is amended by removing paragraphs (d) and (e) and redesignating paragraphs (f) through (i) as paragraphs (d) through (g), and by revising paragraph (b) to read as follows:

§ 12.130 Textiles and textile products country of origin.

* * * * *

(b) Country of origin. For the purpose of this section and except as provided in paragraph (c) of this section, a textile or textile product, subject to section 204, Agricultural Act of 1956, as amended, imported into the customs territory of the United States shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly obtained or produced (as defined in § 102.1(g) of this chapter) in that foreign territory or country, or insular possession. However, except as provided in paragraph (c) of this section, a textile or textile product, subject to section 204 of the Agricultural Act of 1956, as amended, which consists of materials

produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession, where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation when under part 102 of this chapter, the country of origin of a good, which is produced in a country from foreign materials, is determined to be that country.

* * * * *

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, and the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057.

2. Section 102.0 is revised to read as follows:

§ 102.0 Scope.

This part sets forth rules for determining the country of origin of imported goods for purposes of the Customs and related laws and the navigation laws of the United States. The rules in this part regarding goods wholly obtained or produced in a country are intended to apply for all such purposes. The rules in this part which determine when a good becomes a new and different article of commerce as a result of manufacturing processes in a given country, also are intended to apply for all purposes where this requirement exists for "country of origin" or "product of" determinations under the Customs laws. The rules in this part also will be applied by the United States for determining when a good is a good of a North American Free-Trade Agreement (NAFTA) country for the purposes specified under Annex 311 of the NAFTA.

§ 102.1 [Amended]

3. In section 102.1, paragraph (p) is removed and paragraph (q) is redesignated as paragraph (p).

4. Section 102.11(d) is revised to read as follows:

§ 102.11 General rules.

* * * * *

(d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

(1) If the good was produced only as a result of minor processing, the country

of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;

(2) If the good was produced by simple assembly and the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, the country of origin of the good is the country of origin of those parts; or

(3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

§ 102.14 [Removed]

5. Section 102.14 is removed and reserved.

§ 102.16 [Removed]

6. Section 102.16 is removed and reserved.

7. Section 102.17 is amended by revising the introductory text and paragraph (e) to read as follows:

§ 102.17 Non-qualifying operations.

A foreign material shall not be considered to have undergone an applicable change in tariff classification specified in § 102.20 or to have met any other applicable requirements of that section merely by reason of one or more of the following:

* * * * *

(e) Collecting parts that, as collected, are classifiable in the same tariff provision as an assembled good pursuant to General Rule of Interpretation 2(a), without any additional operation other than minor processing.

8. Section 102.18 is revised to read as follows:

§ 102.18 Rules of interpretation.

(a) When General Rule of Interpretation (GRI) 2(a) is referred to in § 102.20 as an exception to an allowed change in tariff classification, this means that such change will not be acceptable for purposes of that section if the change results from the assembly of parts into an incomplete or unfinished good which is classifiable in the same manner as a complete or finished good pursuant to GRI 2(a).

(b)(1) For purposes of identifying the material or materials that impart the essential character of a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is

not allowed under the § 102.20 specific rule or other requirements applicable to the good. For purposes of this paragraph (b)(1):

(i) The materials that may be considered must be classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good under consideration. For example, in the case of a good classified in HTSUS subheading 8607.11 (the rule for which specifies a change to subheading 8607.11 from any other subheading, except from subheading 8607.12, and except from subheading 8607.19 when that change is pursuant to GRI 2(a)), the only materials that may be considered for purposes of identifying the materials that impart the essential character of the good are those that are classified in subheadings 8607.11, 8607.12 and, if the tariff shift is pursuant to GRI 2(a), 8607.19; and

(ii) Materials that may be considered include materials produced by the producer of the good and incorporated in the good. For example, if a producer of a good purchases raw materials and converts those raw materials into a component that is incorporated in the good, that component is a material that may be considered for purposes of identifying the materials that impart the essential character of the good, provided that the component is classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good.

(2) For purposes of determining which material or materials impart the essential character of a good under § 102.11, various factors may be examined depending upon the type of good involved. These factors include, but are not limited to, the following:

(i) The nature of each material, such as its bulk, quantity, weight or value; and

(ii) The role of each material in relation to the use of the good.

9. Section 102.19 is revised to read as follows:

§ 102.19 NAFTA preference override.

(a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11 (a) or (b) to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good.

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

10. In § 102.20, the table is amended by revising the Note and removing the entry for HTSUS 09.04–09.10 under Section II, by adding a Chapter 42 Note under Section VIII, by removing the entry for HTSUS 4810–4814 under Section X, by revising Note (1)d and adding a new Note (1)f and revising Note (3) and removing the entry for HTSUS 5804 and removing the entry for HTSUS 6115–6117 under Section XI, by adding a Chapter 65 Note under Section XII, by removing the entry for HTSUS 7010–7018 under Section XIII, by removing the Note to Section XVI, by adding a Chapter 94 Note and removing the entry for HTSUS 9404.10–9404.30 and removing the entry for HTSUS 9404.90 under Section XX, and by adding and revising the following HTSUS entries in numerical order to read as follows:

§ 102.20 Specific rules by tariff classification.

* * * * *

HTSUS—Tariff Shift and/or Other Requirements

* * * * *

(b) Section II: Chapters 6 through 14.

Note: Notwithstanding the specific rules of this section, an agricultural or horticultural good grown in the territory of a country shall be treated as a good of that country even if grown from seed or bulbs, root stock, cuttings, slips or other live parts of plants, or from whole plants, imported from a foreign country.

* * * * *

0904–0910 A change to heading 0904 through 0910 from any other chapter; or A change to subheading 0910.91 from any other subheading, provided that a single spice ingredient of foreign origin constitutes no more than 60 percent by weight of the good.

* * * * *

1517.90 A change to subheading 1517.90 from any other chapter; or A change to subheading 1517.90 from any other heading provided that no single oil ingredient of

foreign origin constitutes more than 60 percent by volume of the good.

* * * * *

1901.90 A change to subheading 1901.90 from any other heading.

* * * * *

2103.90 A change to subheading 2103.90 from any other subheading.

* * * * *

4104–4107 A change to headings 4104 through 4107 from any other heading, including another heading within that group.

* * * * *

Chapter 42 Note: For the purposes of § 102.11(b) of the General Rules, except for sets, where a textile good classifiable in Chapter 42 does not meet the tariff shift and/or other requirements of the heading or subheading under which it is classifiable, the country of origin of that good shall be the country of origin of the component which determines the classification of that good. However, if more than one component determines classification or the component that determines classification has its origin in more than one country, the country of origin of the good shall be the last country in which the good underwent production other than minor processing.

* * * * *

4810 A change to heading 4810 from any other heading.

4811.10–4811.31 A change to subheading 4811.10 through 4811.31 from any other heading.

4811.39 A change to subheading 4811.39 from any other heading, except from heading 4804.

4811.40–4811.90 A change to subheading 4811.40 through 4811.90 from any other heading.

4812–4814 A change to heading 4812 through 4814 from any other heading, including a heading within that group.

* * * * *

4823.20–4823.59 A change to subheading 4823.20 through 4823.59 from any other chapter.

* * * * *

4823.70–4823.90 A change to subheading 4823.70 through 4823.90 from any other subheading, including another subheading within that group.

* * * * *

(k) Section XI: Chapters 50 through 63.

Notes: (1) * * *

d. The phrase “fully lined, fully padded, or fully insulated”, as used in chapters 61 and 62, means that the major parts of the garment are entirely lined, padded, or insulated, but this does not include waistbands less than fifteen centimeters wide, cuffs less than ten centimeters wide, plackets, collars, shoulder straps, and the like.

* * * * *

f. The phrase "minor embellishments", as used in headings 6302 and 6304, refers to relatively insignificant methods used to enhance the visual appeal of a good, e.g., piping, capping, small amounts of embroidery.

* * * * *

(3) For the purposes of § 102.11(b) of the General Rules, except for sets, where a good classifiable in Chapter 61 through 63 does not meet the tariff shift and/or other requirements of the heading or subheading under which it is classifiable, the country of origin of that good shall be the single country where the component which determines the classification of that good was cut or formed (e.g. knit to shape). However, if more than one component determines classification or the component that determines classification has its origin in more than one country, the country of origin of the good shall be the last country in which the good underwent production other than minor processing.

* * * * *

5101-5105 A change to heading 5101 through 5105 from any other chapter; or A change to combed wool of heading 5105 from greasy wool of heading 5101.

* * * * *

5609 A change to heading 5609 from any other heading except from heading 5004 through 5007, 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607.

* * * * *

5804.10 A change to subheading 5804.10 from any other heading except from heading 5608; or A change from greige fabric of subheading 5804.10 to finished fabric of that same subheading by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

5804.21-5804.30 A change to subheadings 5804.21 through 5804.30 from any subheading outside that group; or A change from greige fabric of subheadings 5804.21 through 5804.30 to finished fabric of those same subheadings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

* * * * *

5806.10-5806.39 A change to subheading 5806.10 through 5806.39 from any heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309

through 5311, 5407 through 5408, 5512 through 5516, and 5801; or A change from greige fabric of subheading 5806.10 through 5806.39 to finished fabric of those same subheadings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

* * * * *

5810 A change of the ground fabric to heading 5810 from any other chapter except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602, 5603, 5608, 5903, 5907, 6001, and 6002; or

Where the weight of the embroidery comprises seven percent or more of the weight of the foreign fabric and the embroidery changes the commercial character of the base fabric, a change to heading 5810 from any other heading.

* * * * *

5903 A change to heading 5903 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002; or

(1) For woven fabric, a change to heading 5903 from any other heading, provided that the impregnation, coating, covering, or lamination accounts for at least 15 percent of the total weight of the fabric; or

(2) For knit fabric, a change to heading 5903 from any other heading, provided that the impregnation, coating, covering, or lamination accounts for at least 20 percent of the total weight of the fabric.

* * * * *

6101 A change to heading 6101 from any other chapter; or

A change to assembled garments of heading 6101, except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or

A change to assembled garments from unassembled parts classified in heading 6101 as a result of the application of GRI 2(a), except (1) anoraks, windbreakers, and similar

articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, provided that no major part has been knit to shape.

6102 A change to heading 6102 from any other chapter; or

A change to assembled garments of heading 6102, except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or

A change to assembled garments from unassembled parts classified in heading 6102 as a result of the application of GRI 2(a), except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, provided that no major part has been knit to shape.

* * * * *

6103.21-6103.29 Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments of subheading 6103.21 through 6103.29 from either subheading 6117.90 or subheading 6217.90; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments from unassembled parts classified in subheading 6103.21 through 6103.29 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.

* * * * *

6104.21-6104.29 Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments of subheading 6104.21 through 6104.29 from either subheading 6117.90 or subheading 6217.90; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments from unassembled parts classified in subheading 6104.21 through 6104.29 as a result of the

- application of GRI 2(a), provided that no major part has been knit to shape.
- * * * * *
- 6115-6116 A change to heading 6115 through 6116 from any other chapter.
- 6117.10 A change to subheading 6117.10 from any other chapter except chapter 60; or A change to subheading 6117.10 from greige fabric of chapter 60 by bleaching, dyeing, printing, cutting on all sides, and stitching.
- 6117.20-6117.90 A change to subheading 6117.20 through 6117.90 from any other chapter.
- 6201 A change to heading 6201 from any other chapter, provided that no major part has been knit to shape; or
- A change to assembled garments of heading 6201, except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or
- A change to assembled garments from unassembled parts classified in heading 6201 as a result of the application of GRI 2(a), except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, provided that no major part has been knit to shape.
- 6202 A change to heading 6202 from any other chapter; or
- A change to assembled garments of heading 6202, except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or
- A change to assembled garments from unassembled parts classified in heading 6202 as a result of the application of GRI 2(a), except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, provided that no major part has been knit to shape.
- * * * * *
- 6203.21-6203.29 Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would
- apply if the garment were separately entered; or
- If the ensemble contains a suit-like jacket or blazer, a change to assembled garments of subheading 6203.21 through 6203.29 from either subheading 6217.90 or subheading 6117.90; or
- If the ensemble contains a suit-like jacket or blazer, a change to assembled garments from unassembled parts classified in subheading 6203.21 through 6203.29 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
- * * * * *
- 6204.21-6204.29 Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered; or
- If the ensemble contains a suit-like jacket or blazer, a change to assembled garments of subheading 6204.21 through 6204.29 from either subheading 6217.90 or subheading 6117.90; or
- If the ensemble contains a suit-like jacket or blazer, a change to assembled garments from unassembled parts classified in subheading 6204.21 through 6204.29 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
- * * * * *
- 6205 A change to heading 6205 from any other chapter, provided that no major part has been knit to shape; or
- A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and yokes, or to assembled fully lined, fully padded, or fully insulated shirts, of heading 6205, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or
- A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and yokes, or to assembled fully lined, fully padded, or fully insulated shirts, from unassembled parts classified in heading 6205 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
- * * * * *
- 6213-6214 A change to heading 6213 through 6214 from any other chapter except from heading 5007, 5111 through 5113, 5208 through
- 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5808 through 5811, 5901, 5903, and 5906 through 5907; or
- A change to heading 6213 through 6214 from greige fabric of heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5808 through 5811, by bleaching, dyeing, printing, cutting on all sides, and stitching.
- * * * * *
- 6302 (1) Except for quilted goods provided for in (2) below, a change to heading 6302 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903, 5906 through 5907, and 6001 through 6002; or
- Except for quilted goods provided for in (2) below, a change to heading 6302 from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903, 5906 through 5907, and 6001 through 6002, provided that the change is the result of cutting finished fabric on all sides and hemming all cut edges plus at least one other subsequent process, with no consideration being given to the addition of minor embellishments.
- (2) For quilted goods, either (a) a change to heading 6302 from any other heading except from subheading 6307.90, provided that both the cutting of the top and bottom fabrics, and the entire assembly of the quilted goods, are done in one country; or (b) If (a) is not satisfied, then the country of origin shall be the country which produced the fabric, or fabrics, which impart the essential character to the goods.
- 6303 (1) For quilted goods, a change to heading 6303 from any other heading except from subheading 6307.90, provided that both the cutting of the top and bottom fabrics, and the entire assembly of the quilted goods, are done in one country. If this rule is not satisfied, then the country of origin shall be the country which produced the fabric, or fabrics, which impart the essential character to the goods; or
- (2) For curtains, drapes, or valances,

except for goods provided for in (1) above, a change to heading 6303 from any other heading, provided that the change is the result of more than cutting on all sides and hemming the cut edges and with no consideration being given to minor processing.

(3) For goods not meeting paragraphs (1) or (2) above, and all other goods, a change to heading 6303 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5811, 5901, 5903, 5906 through 5907, and 6001 through 6002.

6304 (1) Except for quilted goods, pillow covers, and pillow shams provided for in (2) and (3) below, a change to heading 6304 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, and 6001 through 6002; or

Except for quilted goods, pillow covers, and pillow shams provided for in (2) and (3) below, a change to heading 6304 from any other heading except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903, 5906 through 5907, and 6001 through 6002, provided that the change is the result of cutting finished fabric on all sides and hemming all cut edges plus at least one other subsequent process, with no consideration being given to the addition of minor embellishments.

(2) For quilted goods, a change to heading 6304 from any other heading except from subheading 6307.90, provided that both the cutting of the top and bottom fabrics, and the entire assembly of the quilted goods, are done in one country. If this rule is not satisfied, then the country of origin shall be the country which produced the fabric, or fabrics, which impart the essential character to the goods;

(3) For pillow covers and pillow shams, a change to heading 6304 from any other heading.

* * * * *
6306.91-6306.99 A change to subheading 6306.91 through

6306.99 from any other heading except from subheading 6307.90, provided that the change is the result of more than cutting and hemming processes and with no consideration being given to minor processing.

* * * * *
6307.90 A change to subheading 6307.90 from any other heading, provided that the change is the result of at least cutting and a substantial amount of either sewing or assembly operations.

* * * * *
Chapter 65 Note: For the purposes of § 102.11(b) of the General Rules, except for sets, where a textile good classifiable in Chapter 65 does not meet the tariff shift and/or other requirements of the heading or subheading under which it is classifiable, the country of origin of that good shall be the country of origin of the component which determines the classification of that good. However, if more than one component determines classification or the component that determines classification has its origin in more than one country, the country of origin of the good shall be the last country in which the good underwent production other than minor processing.

* * * * *
6811.90 A change to subheading 6811.90 from any other heading.

* * * * *
6812.90 A change to subheading 6812.90 from any other heading.

* * * * *
6814.90 A change to subheading 6814.90 from any other heading.

* * * * *
7010 A change to heading 7010 from any other heading.

7011 change to heading 7011 from any other heading, except from subheading 7003.30.

7012-7018 A change to heading 7012 through 7018 from any other heading, including another heading within that group; or

A change from uncut and unpolished glassware blanks of heading 7013 to cut and polished glassware of heading 7013, provided that there has been a substantial amount of both cutting and polishing operations in a single country.

* * * * *
7019.90 A change to subheading 7019.90 from any other heading.

7020 A change to heading 7020 from any other heading, except from heading 7010 through 7018.

* * * * *
8301.10-8301.50 A change to subheading 8301.10 through 8301.50 from any other subheading, including any subheading within that group, except a change from

subheading 8301.60 when that change is pursuant to GRI 2(a).

* * * * *
8401.20 A change to subheading 8401.20 from any other subheading; or
A change to completed machinery and apparatus of subheading 8401.20 from parts of that same subheading.

* * * * *
8415.90 A change to subheading 8415.90 from any other subheading, except when the change is from heading 7411, 7608, 8414, 8501, and 8535 through 8537 as a result of a simple assembly.

* * * * *
8470.10-8471.91 A change to subheading 8470.10 through 8471.91 from any subheading outside that group, except from heading 8473; or

A change to subheading 8470.10 through 8471.91 from any subheading within that group or from heading 8473, provided the change is not the result of a simple assembly.

8471.92-8472.90 A change to subheading 8471.92 through 8472.90 from any subheading outside that group, except heading 8473; or

A change to subheading 8471.92 through 8472.90 from any subheading within that group or from heading 8473, provided the change is not the result of a simple assembly.

8473 A change to heading 8473 from any other heading, except when the change is from heading 8414, 8501, 8504, 8534, 8541, or 8542 as a result of a simple assembly.

8474.10-8474.80 A change to subheading 8474.10 through 8474.80 from any subheading outside that group, except heading 8501; or

A change to subheading 8474.10 through 8474.80 from any subheading within that group or heading 8501, provided the change is not the result of a simple assembly.

* * * * *
8482.10-8482.80 A change to subheading 8482.10 through 8482.80 from any other heading; or

A change to subheading 8482.10 through 8482.80 from any other subheading, including another subheading within that group, except from inner or outer races or rings of subheading 8482.99.

8512.40 A change to subheading 8512.40 from any other subheading, except when the change is from subheading 8512.90 or heading 8501 as a result of a simple assembly.

* * * * *

8517.10–8517.82 A change to subheading 8517.10 through 8517.82 from any subheading outside that group, except from subheading 8517.90; or
A change to subheading 8517.10 through 8517.82 from subheading 8517.90, provided the change is not the result of a simple assembly.

* * * * *

8528.10–8528.20 A change to subheading 8528.10 through 8528.20 from any other subheading, including another subheading within that group, except from subheading 8540.11 through 8540.12.

* * * * *

8531.10–8531.80 A change to subheading 8531.10 through 8531.80 from any other subheading, including another subheading within that group, except when the change is from subheading 8531.90 as a result of a simple assembly.

* * * * *

8541–8542 A change to heading 8541 through 8542 from any other subheading, including another subheading within that group; or
A change to a mounted chip, die or wafer of heading 8541 or 8542 from an unmounted chip, die or wafer of heading 8541 or 8542; or
A change to a programmed “read only memory” (ROM) chip from an unprogrammed “programmable read only memory” (PROM) chip.

* * * * *

8708.99 A change to subheading 8708.99 from any other subheading.

* * * * *

9101–9107 A change to heading 9101 through 9107 from any heading outside that group, except heading 9108 through 9110; or
A change to heading 9101 through 9107 from complete movements, unassembled, of subheading 9110.11 or 9110.90, or from rough movements of subheading 9110.19 or 9110.90.

9108–9109 A change to heading 9108 through 9109 from any heading outside that group, except heading 9110; or
A change to heading 9108 through 9109 from complete movements, unassembled, of subheading 9110.11 or 9110.90, or from rough

movements of subheading 9110.19 or 9110.90.

9110 A change to heading 9110 from any other heading, except from subheading 9114.90.

* * * * *

Chapter 94 Note: For a good classifiable in subheadings 9404.30 through 9404.90 which does not meet the appropriate tariff shift rule specified for those subheadings, the country of origin is the country where all cutting and sewing operations required to form the outer shell were performed. If all cutting and sewing operations required to form the outer shell were not performed in a single country, the country of origin will be the single country where the component of the outer shell which determines the classification of that good was produced. If a single country did not produce a component of the outer shell which determines the classification of that good, then the country of origin will be the country in which the good last underwent a substantial assembly process.

* * * * *

9401.90 A change to subheading 9401.90 from any other heading, except from subheading 9403.90.

* * * * *

9403.90 A change to subheading 9403.90 from any other heading, except from subheading 9401.90.

9404.10–9404.29 A change to subheading 9404.10 through 9404.29 from any other heading.

9404.30–9404.90 A change to down and/or feather filled goods of subheading 9404.30 through 9404.90 from any other heading; or
For all other goods of subheading 9404.30 through 9404.90, a change from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, 6001 through 6002, and 6307.90.

* * * * *

9606.21–9606.29 A change to subheading 9606.21 through 9606.29 from any other heading.

* * * * *

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. Section 134.1 is amended by revising paragraph (b), redesignating paragraphs (d) through (j) as (e) through (k), adding a new paragraph (d), and revising newly designated paragraphs (e) (1) and (2) to read as follows:

§ 134.1 Definitions.

* * * * *

(b) *Country of origin.* “Country of origin”, when used with reference to any article of foreign origin imported into the United States, means the country in which the article was wholly obtained or produced within the meaning of § 102.1(e) of this chapter, or, in the case of an article not wholly obtained or produced in one country, the country where the article last underwent a substantial transformation prior to its importation into the United States.

* * * * *

(d) *Substantial transformation.* “Substantial transformation” occurs when, under part 102 of this chapter, the country of origin of a good, which is produced in a country from foreign materials, is determined to be that country.

(e) *Ultimate purchaser.* * * *

(1) If an imported article will be used in further processing, the processor will be the “ultimate purchaser” if he subjects the imported article to a process which results in a substantial transformation of the article.

(2) If the process does not result in a substantial transformation of the imported article, the consumer or user of the article, who obtains the article after the processing, will be regarded as the “ultimate purchaser”.

* * * * *

§ 134.32 [Amended]

3. In § 134.32, paragraph (r) is removed.

4. Section 134.35 is revised to read as follows:

§ 134.35 Articles substantially transformed after importation.

If an imported article will be used in further processing in the United States, the processor will be considered the ultimate purchaser if such article is determined to be a good of the United States under part 102 of this chapter. In such a case, the imported article is excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D) and § 134.32(d), provided the container in which it is imported will reasonably indicate the country of origin of the article to the ultimate purchaser.

§ 134.43 [Amended]

5. In § 134.43, paragraph (e) is removed.

PART 177—ADMINISTRATIVE RULINGS

1. The general authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

2. In § 177.22, paragraph (a) is revised to read as follows:

§ 177.22 Definitions.

(a) *Country of origin.* For the purpose of this subpart, an article is a product of a country or instrumentality only if it is wholly the growth, product, or manufacture of that country or instrumentality or, in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce. The term "instrumentality" shall not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community. For purposes of this section, an article is "wholly the growth, product, or manufacture" of a country or instrumentality if it is wholly obtained or produced (as defined in § 102.1(g) of this chapter) in that country or instrumentality, and a "new and different article of commerce" exists when under part 102 of this chapter, the country of origin of a good, which is produced in a country or instrumentality from foreign materials, is determined to be that country or instrumentality.

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George J. Weise,

Commissioner of Customs.

Approved: April 19, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95-10856 Filed 5-4-95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and

Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of rules pertaining to definitions, designation of lands unsuitable for surface coal mining, permit application information, minimum requirements for reclamation and operation plans in permit applications, review and approval or denial of permit applications and permit conditions, performance standards for coal exploration, and performance standards for surface coal mining operations. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.d.t. June 5, 1995. If requested, a public hearing on the proposed amendment will be held on May 30, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on May 22, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas Ehmett at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director,
Albuquerque Field Office, Office of
Surface Mining Reclamation and
Enforcement, 505 Marquette Avenue,
NW., Suite 1200, Albuquerque, New
Mexico 87102

New Mexico Energy and Minerals
Department, Mining and Minerals
Division, 2040 South Pacheco Street,
Santa Fe, New Mexico 87505,
Telephone: (505) 827-5970

FOR FURTHER INFORMATION CONTACT:
Thomas Ehmett, Telephone: (505) 766-
1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New

Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated April 13, 1995, New Mexico submitted a proposed amendment to its program (administrative record No. NM-739) pursuant to SMCRA (U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(c), (d), and (f) through (s) (56 FR 67520, December 31, 1991, and 58 FR 65907, December 17, 1993) and at its own initiative. The provisions of the New Mexico rules that New Mexico proposes to revise are: Coal Surface Mining Commission (CSMC) Rule 80-1-5, definitions; CSMC Rule 80-1-4-15, designation of lands unsuitable for surface coal mining; CSMC Rule 80-1-7-14, permit application information; CSMC Rule 80-1-9-39, minimum requirements for reclamation and operation plans in permit applications; CSMC Rules 80-1-11-17, 80-1-11-19, 80-1-11-20, and 80-1-11-29, review of and approval or denial of permit applications and permit conditions; CSMC Rule 80-1-19-15, performance standards for coal exploration; and CSMC Rules 80-1-20-41 and 49, 80-1-20-82, 80-1-20-89, 80-1-20-93, 80-1-20-97, 80-1-20-116 and 117, 80-1-20-124, and 80-1-20-150, performance standards for surface coal mining operations.

Specifically, New Mexico proposes to revise CSMC Rule 80-1-5 to define "qualified laboratories" and "SMCRA;" CSMC Rule 80-1-4-15(b)(1) to require that New Mexico publish in its State Register receipt of a petition to designate lands unsuitable for surface coal mining; and CSMC Rule 80-1-7-14(c) to require that a permit application include information on all violations received pursuant to SMCRA.

Concerning minimum requirements for reclamation and operation plans in permit applications, New Mexico proposes to revise CSMC Rule 80-1-9-39(c) to require a permit application to include a description of measures that an operator would use to mitigate or remedy subsidence-related material damage to the land and occupied residential dwellings, structures related thereto, and noncommercial buildings where the damage resulted from underground mining operations conducted after October 24, 1992; and CSMC Rule 80-1-9-39(d) to delete in its entirety paragraph (d)(2), concerning an exception from subsidence control measures.