DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 102 and 177

[USCBP–2021–0025]

RIN 1515–AE63

Non-Preferential Origin Determinations for Merchandise Imported From Canada or Mexico for Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)

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

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations regarding non-preferential origin determinations for merchandise imported from Canada or Mexico. Specifically, this document proposes that CBP will apply certain tariff-based rules of origin in the CBP regulations for all non-preferential determinations made by CBP, specifically, to determine when a good imported from Canada or Mexico has been substantially transformed resulting in an article with a new name, character, or use. For consistency, this document also proposes to modify the CBP regulations for certain country of origin determinations for government procurement. Collectively, the proposed amendments in this notice of proposed rulemaking (NPRM) are intended to reduce administrative burdens and inconsistency for non-preferential origin determinations for merchandise imported from Canada or Mexico for purposes of the implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA). Elsewhere in this issue of the **Federal Register**, CBP is publishing an interim final rule to amend various regulations to implement the USMCA for preferential tariff treatment claims. The interim final rule amends the CBP regulations, *inter alia,* to apply certain tariff-based rules of origin for determining the country of origin for the marking of goods imported from Canada or Mexico.

DATES: Comments must be received by August 5, 2021.

ADDRESSES: You may submit comments, identified by *docket number* USCBP–2021–00X25 by *one* of the following methods:

- Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Due to the relevant COVID–19-related restrictions, CBP has temporarily suspended on-site public inspection of the public comments.

FOR FURTHER INFORMATION CONTACT: *Operational Aspects:* Queena Fan, Director, USMCA Center, Office of Trade, U.S. Customs and Border Protection, (202) 738–8946 or *usmca@cbp.dhs.gov.*

Legal Aspects: Craig T. Clark, Director, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, (202) 325–0276 or *craig.t.clark@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

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

II. Background

The country of origin of merchandise imported into the customs territory of the United States (the fifty states, the District of Columbia, and Puerto Rico) is important for several reasons. The country of origin of merchandise determines the rate of duty, admissibility, quota, eligibility for procurement by government agencies, and marking requirements. There are various rules of origin for goods imported into the customs territory of the United States, generally referred to as ''preferential'' and ''non-preferential'' rules of origin. ''Preferential'' rules are those that apply to merchandise to determine eligibility for special treatment, including reduced or zero tariff rates, under various trade agreements or duty preference legislation, *e.g.,* Generalized System of Preferences. ''Non-preferential'' rules are those that generally apply for all other purposes.[1] CBP uses the substantial transformation standard to determine the country of origin of goods for non-preferential purposes. For a substantial transformation to occur, ''a new and different article must emerge, 'having a distinctive name, character or use.''' *Anheuser-Busch Brewing Ass'n* v. *United States,* 207 U.S. 556, 562 (1908) (quoting *Hartranft* v. *Wiegmann,* 121 U.S. 609, 615 (1887)).

CBP applies two different methods for determining if merchandise has been substantially transformed. One method involves case-by-case adjudication, relying primarily on tests articulated in judicial precedent and past administrative rulings. The other method consists of codified rules in part 102 of title 19 of the Code of Federal Regulations (19 CFR part 102) (referred to as the part 102 rules), which are primarily expressed through specified differences in the Harmonized Tariff Schedule of the United States (HTSUS) classification of the good and its materials. This method is often referred to as the ''change in tariff classification''

[1] The term ''non-preferential purposes'' generally refers to purposes set forth in laws, regulations, and administrative determinations of general application applied to determine the country of origin of goods not related to the granting of tariff preferences pursuant to a trade agreement or a trade preference program such as the Generalized System of Preferences. Non-preferential purposes include antidumping and countervailing duties; safeguard measures; origin marking requirements; and any discriminatory quantitative restrictions or tariff quotas. They also include rules of origin used for trade statistics and for determining eligibility for government procurement. *See, e.g.,* Art. I, Uruguay Round Agreement on Rules of Origin. They do not include the rules of origin used to determine eligibility for preferential tariff treatment under trade agreements unless otherwise explicitly specified in those agreements. Notwithstanding the above, under Title VII of the Tariff Act of 1930, as amended, merchandise within the scope of the Department of Commerce's antidumping and/or countervailing duty proceedings may be associated with a country of origin (for purposes of the scope of antidumping/countervailing duties) that is different from the country of origin determined by CBP for other purposes.

or ''tariff shift'' method. Both the case-by-case and tariff shift methods are intended to produce the same determinations as to origin because both apply the same substantial transformation standard.

CBP first promulgated the part 102 rules in 1994 to fulfill the commitment of the United States under Annex 311 of the North American Free Trade Agreement (NAFTA), which required the parties to establish rules for determining whether a good is a good of a NAFTA party (*i.e.,* the United States, Mexico, or Canada). In contrast to the case-by-case method, the part 102 rules were intended to provide for more certainty, transparency, and consistency in application of origin decisions. They codify, rather than constitute an alternative to, the substantial transformation standard and are intended to implement the standard consistently.[2]

Country of Origin Marking Requirements for Imported Merchandise From Canada or Mexico Pursuant to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)[3]

On November 30, 2018, the ''Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Protocol) was signed to replace the NAFTA. Section 601 of the United States-Mexico-Canada Agreement Implementation Act (USMCA Act), Public Law 116–113, 134 Stat. 11 (19 U.S.C. Chapter 29), repealed the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), Public Law 103–182, 107 Stat. 2057 (19 U.S.C. 3301 *et seq.*), as of the date that the USMCA entered into force, July 1, 2020. The NAFTA provisions set forth in part 181 of title 19 of the CFR (19 CFR part 181) and in General Note 12, Harmonized Tariff Schedule of the United States (HTSUS), continue to apply to goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020. On July 1, 2020, CBP published an interim final rule (IFR) in the **Federal Register** (CBP Dec. 20–11) amending 19 CFR part 181 and adding a new part 182 of title 19 of the CFR (19 CFR part 182) containing several USMCA provisions, including the Uniform Regulations regarding rules of origin (appendix A to part 182). *See* 85 FR 39690 (July 1, 2020).

In another IFR published elsewhere in this issue of the **Federal Register** (''Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Implementing Regulations Related to the Marking Rules, Tariff-rate Quotas, and Other USMCA Provisions'' (RIN 1515–AE56)), CBP is amending the CBP regulations to include additional USMCA implementing regulations in 19 CFR part 182 and to amend other portions of title 19 of the CFR. The IFR includes amendments to parts 102 and 134 of title 19 of the CFR (19 CFR parts 102 and 134) to apply the rules of origin set forth in 19 CFR part 102 for determining the country of origin for the marking of goods imported from Canada or Mexico. Those amendments facilitate the transition from the NAFTA to the USMCA by maintaining the status quo for country of origin for marking determinations.

Non-Preferential Origin Determinations for Merchandise Imported From Canada or Mexico

Although the NAFTA Implementation Act was repealed by the USMCA Act as of July 1, 2020, the part 102 rules remain in 19 CFR part 102 and are applicable for country of origin marking determinations for goods imported from Canada or Mexico under the USMCA (pursuant to the IFR, being concurrently published, as explained above). The part 102 rules, specifically §§ 102.21 through 102.25, are also to be used by CBP to determine the country of origin of textile and apparel products (imported from all countries except from Israel (*see* 19 CFR 102.22)), including the administration of quantitative restrictions, if applicable.

After the part 102 rules were promulgated in 1994, the rules were subsequently amended to also include references to specific U.S. trade agreements that incorporated those rules as part of the determination for trade preference eligibility, *i.e.,* for preference purposes. For example, as indicated in the scope provision for part 102, the rules set forth in §§ 102.1 through 102.21 also apply for purposes of determining whether an imported good is a new or different article of commerce under § 10.769 of the United States-Morocco Free Trade Agreement regulations and § 10.809 of the United States-Bahrain Free Trade Agreement regulations.

Unlike the NAFTA, the USMCA does not refer to a marking requirement, except with regard to certain agricultural goods. For certain agricultural goods, the USMCA does contain a requirement that a good must first qualify to be marked as a good of Canada or Mexico in order to receive preferential tariff treatment under the USMCA. For most goods, only the general Uniform Regulations regarding rules of origin set forth in Appendix A of part 182 of title 19 (19 CFR part 182) and the product-specific rules of origin contained in General Note 11, HTSUS, are needed to determine whether a good is an originating good under the USMCA and therefore is eligible to receive preferential tariff treatment.

The Secretary of the Treasury has general rulemaking authority, pursuant to 19 U.S.C. 1304 and 1624, to make such regulations as may be necessary to carry out the provisions of section 304(a) of the Tariff Act of 1930, as amended, related to the country of origin requirements for imported articles of foreign origin. The Department of the Treasury and CBP have concluded that extending application of the well-established part 102 rules to goods imported from the USMCA countries of Canada and Mexico will provide continuity for the importing community because those rules have been applied to all imports from these countries since 1994.[4] The importing community has made extensive efforts to comply with the part 102 rules and CBP has significant experience in applying those rules to imported merchandise from Canada and Mexico. The part 102 rules, as codified, are a reliable, simplified, and standardized method for CBP when determining the country of origin for customs purposes.

When promulgating the part 102 rules in 1994, the U.S. Customs Service (now CBP) explained:

> . . . the long history of the substantial transformation rule, [and] its administration has not been without problems. These problems devolve from the fact that application of the substantial transformation rule is on a case-by-case basis and often involves subjective judgments as to what

[2] *See* ''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,'' 60 FR 22312, 22314 (May 5, 1995), citing, in part, ''Rules of Origin Applicable to Imported Merchandise,'' 59 FR 141 (Jan. 3, 1994).

[3] The Agreement Between the United States of America, the United Mexican States, and Canada is the official name of the USMCA treaty. Please be aware that, in other contexts, the same document is also referred to as the United States-Mexico-Canada Agreement.

[4] This rule does not apply for purposes of determining whether merchandise is subject to the scope of antidumping and countervailing duty proceedings under Title VII of the Tariff Act of 1930, as amended, as such determinations fall under the authority of the Department of Commerce. Specifically, notwithstanding a CBP country of origin determination, that merchandise may be subject to the scope of antidumping and/or countervailing duty proceedings associated with a different country.

constitutes a new and different article or as to whether processing has resulted in a new name, character, and use. As a result, application of the substantial transformation rule has remained essentially non-systematic in that a judicial or administrative determination in one case more often than not has little or no bearing on another case involving a different factual pattern. Thus, while judicial and administrative decisions involving the substantial transformation rule may have some value as restatements or refinements of the basic rule, they are often of little assistance in resolving individual cases involving the myriad of issues or tests that have arisen, such as the distinction between producer's goods and consumer's goods, the significance of further manufacturing or finishing operations, and the issue of dedication to use. The very fact that the substantial transformation rule has been the subject of a large number of judicial and administrative determinations is testament to the basic problem: The case-by-case approach, involving application of the rule based on specific sets of facts, has led to varied case-specific interpretations of the basic rule, resulting in a lack of predictability which in turn has engendered a significant degree of uncertainty both within Customs and in the trade community as regards the effect that a particular type of processing should have on an origin determination.

''Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement,'' 59 FR 110, 141 (January 3, 1994).

Importers of goods from Canada and Mexico are well-versed in the part 102 rules, and the greater specificity and transparency those rules provide will facilitate the determination of eligibility for USMCA tariff preferences for certain agricultural goods, as noted above. Accordingly, to make the transition from the NAFTA to the USMCA as smooth as possible for the importing community, CBP is amending 19 CFR parts 102 and 134, in the IFR concurrently published today, to continue application of the part 102 rules to determine the country of origin for marking purposes of a good imported from Canada or Mexico.

CBP has not previously applied the part 102 rules for non-preferential origin determinations involving goods imported from Canada and Mexico other than for textile products and for purposes of determining country of origin marking. CBP has, instead, used case-by-case adjudication for other non-preferential origin determinations. CBP makes such non-preferential origin determinations for purposes such as admissibility, quota, procurement by government agencies, and application of duties imposed under sections 301 to 307 of the Trade Act of 1974, as amended (19 U.S.C. 2411–2417, commonly referred to as ''Section 301''). This means that importers of goods from Canada and Mexico are subject to two different non-preferential origin determinations for imported merchandise: One for marking; and, another for determining origin for other purposes. Consequently, these importers must also potentially comply with requirements to declare two different countries of origin for the same imported good (*e.g.,* Canada and China). This burdens importers with unnecessary additional requirements, creates inconsistency, and reduces transparency.

To address these burdens, CBP is proposing to amend the scope section of part 102 of title 19 of the CFR so that the substantial transformation standard will be applied consistently across all non-preferential origin determinations that CBP makes for merchandise imported from Canada and Mexico. This purpose is accomplished by adding new language to the scope provision of the part 102 rules. The proposed regulatory change will obviate the need for importers of merchandise from Canada and Mexico wishing to comply with the various laws that require CBP origin determinations from having to request multiple non-preferential country of origin determinations from CBP for a particular good. The proposed regulatory change also means that CBP will no longer need to issue rulings with multiple non-preferential origin determinations goods imported from Canada or Mexico, and there will no longer be rulings that conclude that a good imported from Canada or Mexico has two different origins under the USMCA (*i.e.,* one for marking and one for other, customs non-preferential purposes). CBP's application of the part 102 rules would not, however, affect similar determinations made by other agencies, such as the Department of Commerce's scope determinations in antidumping or countervailing duty proceedings (*see* 19 CFR 351.225), determinations by the Agricultural Marketing Service under the Country of Origin Labeling (''COOL'') law (*see* 7 CFR part 65), or origin determinations made by other agencies for purposes of government procurement under the Federal Acquisition Regulation (*see* 48 CFR chapter 1).

CBP is also proposing to make corresponding edits to part 177 of title 19 of the CFR, which sets forth the requirements for various types of administrative rulings. Specifically, subpart B of part 177 applies to the issuance of country of origin advisory rulings and final determinations relating to government procurement for purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law and practice for products from eligible countries. As noted in 19 CFR 177.21, the subpart is intended to be applied consistent with the Federal Acquisition Regulation (48 CFR chapter 1) and the Defense Acquisition Regulations System (48 CFR chapter 2). It is also noted that Chapter 13 of the USMCA provides that the United States will apply the same rules of origin to Mexican imports for government procurement as it does for other trade. The United States has the same obligation to Canada under Article IV:5 of the WTO Agreement on Government Procurement. While the substantial transformation standard already applies by statute (19 U.S.C. 2518(4)(B)), CBP's proposed application of the part 102 rules to make these substantial transformation determinations would ensure the consistency of CBP determinations for goods imported from Mexico and Canada. The proposed regulatory change will specifically provide that, when making country of origin determinations for purposes of subpart B of part 177, the part 102 rules will be applied by CBP to determine whether goods imported into the United States from Canada or Mexico previously underwent a substantial transformation in Canada or Mexico. The proposed regulatory change would not affect the origin determinations other agencies make related to procurement.

III. Discussion of Proposed Amendments

Pursuant to 19 U.S.C. 4535(a), the Secretary of the Treasury has the authority to prescribe such regulations as may be necessary to implement the USMCA. Section 103(b)(1) of the USMCA Act (19 U.S.C. 4513(b)(1)) requires that initial regulations necessary or appropriate to carry out the actions required by or authorized under the USMCA Act or proposed in the Statement of Administrative Action approved under 19 U.S.C. 4511(a)(2) to implement the USMCA shall, to the maximum extent feasible, be prescribed within one year after the date on which the USMCA enters into force. The Secretary also has general rulemaking authority, pursuant to 19 U.S.C. 1304 and 1624, to make such regulations as may be necessary to carry out the provisions of the Tariff Act of 1930, as amended, related to the country of origin requirements for imported articles of foreign origin. The Secretary also has authority under 19 U.S.C. 1502 to regulate the procedures for issuing binding rulings, and 19 U.S.C. 2515(b)(1) requires the Secretary to make rulings and determinations as to

substantial transformation under 19 U.S.C. 2518(4)(B).

CBP is proposing to amend the scope provision in 19 CFR part 102 to apply the substantial transformation standard consistently across country of origin determinations CBP makes for imported goods from the USMCA countries of Canada and Mexico for non-preferential purposes.[5] Specifically, CBP proposes to amend section 102.0 to extend the scope of part 102 to state that the rules set forth in §§ 102.1 through 102.18 and 102.20 are intended to apply to CBP's country of origin determinations for non-preferential purposes for goods imported from Canada and Mexico.

CBP is also proposing to amend subpart B of 19 CFR part 177 to add a cross-reference to clarify that, for ''country of origin'' in § 177.22(a), the determination pursuant to 19 U.S.C. 2515(b)(1) as to whether an article has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed, for purposes of granting waivers of certain ''Buy American'' restrictions, must be made using the rules set forth in §§ 102.1 through 102.18 and 102.20 of title 19 of the CFR for goods from Canada and Mexico.

IV. Statutory and Regulatory Authority

A. Executive Orders 13563 and 12866

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

Background and Purpose of Rule

All merchandise of foreign origin imported into the United States must generally be marked with its country of origin, and it is subject to a country of origin determination by CBP.[6] The country of origin of imported goods may be used as a factor to determine preferential trade treatment, such as eligibility under various trade agreements and special duty preference legislation, like the Generalized System of Preferences. The country of origin of imported goods is also used to determine non-preferential trade treatment, such as admissibility, marking, and trade relief.[7] Importers must exercise reasonable care in determining the country of origin of their goods and often make this determination on their own. However, some importers may seek advice from CBP to determine the country of origin for their goods for preferential and/or non-preferential purposes.

CBP applies two methods for determining the country of origin of imports for non-preferential purposes, as stated above. One method involves case-by-case adjudication to determine whether the goods have been substantially transformed in a particular country, relying primarily on judicial precedent and past administrative rulings. The other method consists of codified rules in part 102 of title 19 of the Code of Federal Regulations (19 CFR part 102) (referred to as the part 102 rules), which are also used to determine whether the goods have been substantially transformed, but are primarily expressed through specific changes in the Harmonized Tariff Schedule of the United States (HTSUS) classification, often referred to as a ''tariff shift.'' Both the case-by-case and tariff shift methods implement the substantial transformation standard and are intended to lead to the same result.

Prior to the USMCA, under the NAFTA, country of origin marking determinations were made using the NAFTA marking rules codified in 19 CFR part 102 that specify whether a good imported from Canada or Mexico that is not entirely of Canadian or Mexican origin has been substantially transformed through processes that resulted in changes in the tariff classification (*i.e.,* tariff shifts) in Canada or Mexico. To determine the country of origin of goods imported from Canada or Mexico for other non-preferential purposes (*i.e.,* purposes other than marking), CBP employed case-by-case adjudication to determine whether such goods were substantially transformed in those NAFTA countries. These different non-preferential country of origin-determination methods required some importers to determine and declare two different countries of origin for the same imported good (*e.g.,* Canada and China).

The USMCA, which recently superseded the NAFTA, was generally silent as to how the country of origin should be determined for goods imported from Canada and Mexico for marking and other non-preferential purposes. However, CBP is concurrently publishing an IFR in this issue of the **Federal Register** that, among other things, continues to apply the existing part 102 rules for determining the country of origin for marking of goods imported from Canada or Mexico. In this proposed rule, CBP proposes to expand the scope of the part 102 rules to provide that those rules are also to be generally applicable for all other (*i.e.,* other than marking) non-preferential origin determinations made by CBP for goods imported from the USMCA countries of Canada and Mexico. CBP's application of the part 102 rules would not, however, affect similar determinations made by other agencies, such as the Department of Commerce's scope determinations in antidumping or countervailing duty proceedings (*see* 19 CFR 351.225).

With this regulatory change, all non-preferential country of origin determinations by CBP for goods imported from Canada or Mexico would be based on substantial transformation pursuant to the tariff shift rules required by 19 CFR part 102. This would eliminate the need for some importers of products from Canada or Mexico to request two different non-preferential determinations—one for country of origin marking and one for case-by-case adjudication for other non-preferential purposes—to confirm CBP's treatment of their imports and avoid potentially different determinations. The rulemaking would also eliminate the need for some importers to comply with requirements to declare two different countries of origin for the same imported good (*e.g.,* Canada and China). CBP is proposing these changes to simplify and standardize country of origin determinations by CBP for all non-preferential purposes for goods imported from Canada or Mexico.

Population Affected by Rule

This rulemaking would directly affect certain importers of goods from Canada and Mexico and the U.S. Government (particularly CBP). In fiscal year (FY) 2019, 38,832 importers[8] made 2.6 million non-NAFTA-preference entries

[5] *See supra* footnote 4.

[6] *See* 19 U.S.C. 1304 and 19 CFR part 134.

[7] *See supra* footnote 4.

[8] Based on unique importer of record (IOR) numbers of importers who entered goods in FY 2019. In some cases, multiple IOR numbers correspond to the same entity.

of goods from Canada and Mexico.[9] All of these entries were subject to non-preferential country of origin marking requirements, while some of these goods were also subject to other non-preferential country of origin determinations, like trade remedies, that involve case-by-case adjudication. Around the same time, in FY 2020 and the start of FY 2021, CBP issued 52 rulings determining the origin of goods imported from Canada and Mexico for non-preferential purposes.[10] These rulings, except for those involving the importation of certain textile and apparel products, employed case-by-case adjudication to determine whether such goods were substantially transformed in Canada or Mexico or other countries.

In the future, CBP projects that around 38,832 importers would continue to make around 2.6 million entries of goods from Canada and Mexico that are subject to non-preferential trade treatment, with or without this rule, each year. An unknown share of these importers would enter goods subject to non-marking-related non-preferential treatment. CBP also projects that about 52 case-by-case non-preferential country of origin determinations would be requested and issued each year in the absence of this rulemaking based on the historical number of case-by-case adjudications. This rulemaking would eliminate such case-by-case determination requests and the issuance of such rulings.

Costs and Revenue Impacts of Rule

This rulemaking may introduce changes in non-preferential payments from importers to the U.S. Government. In addition, there may be minimal costs for some importers, as discussed in this section. Changing from case-by-case adjudications for other non-preferential origin purposes to part 102's tariff shift rules may impose some costs on importers with goods from Canada and Mexico. Importers who switch from using these two determination methods for non-preferential origin purposes to just the part 102 rules with this rulemaking may, for example, incur some one-time, minor costs to adjust their inventory tracking systems and Automated Commercial Environment (ACE) entries to reflect the part 102-based non-marking, non-preferential country of origin for their goods in those cases where origin determinations under the current practice have been inconsistent.[11] In such instances, importers may also need to adjust their business practices to ensure that they properly use the part 102 rules for all non-preferential country of origin purposes when the goods are sourced from Canada or Mexico under this proposed rule. These same importers must also ensure that they use case-by-case adjudications for any goods sourced outside of Canada or Mexico that are subject to non-preferential treatment. The extent of these costs on importers is unknown, but likely to be minimal. CBP requests public comments on these costs and any other costs of this rule to importers. This rule would not introduce costs to CBP.

In addition to costs, applying the part 102 (tariff shift) rules of origin rather than case-by-case adjudications to determine the origin for other non-preferential purposes could lead to trade policy outcomes different from historical and current practice. If an importer's goods are subject to inconsistent origin determinations under the current practice, this proposed rule may lead to a change in non-preferential payments from importers to the U.S. Government, which would result in an equal change in U.S. Government revenue. The number of instances where an importer would receive a different non-preferential country of origin determination under this rulemaking compared to current practice would likely be low, especially considering both methods apply the same substantial transformation standard and are intended to reach the same results. The specific effects of these different determinations on revenue are unknown. Any change in payments from importers to the U.S. Government as a result of this rulemaking are considered transfers rather than costs or benefits as they are moving money from one part of society to another.[12] CBP requests public comments on the potential number of instances where a good would be treated differently under trade remedy laws and relief under the new rule compared to historical and current practice and any related effects on revenue.

Benefits of Rule

Besides costs and revenue impacts, this rulemaking would introduce benefits to importers and the U.S. Government. Importers must exercise reasonable care when determining the country of origin for their goods, which can include researching previous case-by-case adjudications on substantial transformation. This rulemaking would enhance the consistency of country of origin marking and non-preferential country of origin determinations for goods imported from Canada and Mexico. All determinations made by CBP would be based on substantial transformation through application of the part 102 rules. This change would allow importers of goods from Canada and Mexico to comply with just one non-preferential country of origin determination made by CBP for their goods rather than two.

The overall benefit to importers of complying with just one country of origin determination method from CBP for their goods from Canada and Mexico is unknown. Some importers who require CBP ruling requests to determine the country of origin for non-preferential purposes would enjoy greater benefits from the transition to just one non-preferential determination method. As previously described, importers of goods from Canada and Mexico must currently request two country of origin rulings from CBP if they cannot determine the country of origin for non-preferential purposes—one for country of origin marking and one for case-by-case adjudication for other non-preferential purposes. CBP estimates that a case-by-case determination request takes an importer at least 8 hours on average to request, at a time cost of $250.96 per request according to an importer's average hourly time value of $31.37.[13] Based on

[9] These goods were not eligible for the generalized system of preferences.

[10] Based on data from October 1, 2019, to December 16, 2020.

[11] As an example, if an importer has an inventory tracking system that identifies the non-marking, non-preferential country of origin for its goods from Canada and Mexico based on existing case-by-case adjudication rules, with this rule, that importer may need to revise the system to ensure that it identifies the goods based on the part 102 rules if the importer is importing goods subject to inconsistent origin determinations under the current practice.

[12] As described in OMB Circular A–4, transfer payments occur when ''. . . monetary payments from one group [are made] to another [group] that do not affect total resources available to society.'' Examples of transfer payments include payments for insurance and fees paid to a government agency for services that an agency already provides.

[13] CBP bases this $31.37 loaded wage rate on the Bureau of Labor Statistics' (BLS) 2020 median hourly wage rate for Cargo and Freight Agents ($21.04), which CBP assumes best represents the wage for importers, multiplied by the ratio of BLS' average 2020 total compensation to wages and salaries for Office and Administrative Support occupations (1.4912), the assumed occupational group for importers, to account for non-salary employee benefits. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, ''May 2020 National Occupational Employment and Wage Estimates United States- Median Hourly Wage by Occupation Code- Occupation Code 43–5011.'' Updated March 31, 2020. Available at *https://www.bls.gov/oes/2020/may/oes_nat.htm.* Accessed June 1, 2021. The total compensation to wages and salaries ratio is equal to the calculated average of the 2020 quarterly

this time cost and the historical average of about 52 case-by-case adjudication requests for non-preferential country of origin determinations for goods imported from Canada and Mexico, CBP estimates that importers would save at least $13,050 in research time costs each year from no longer submitting case-by-case adjudication requests to CBP for their non-preferential country of origin requests for goods from Canada and Mexico. These requests may impose an unknown amount of additional time and resource costs on importers from an importer's gathering of information for the process and drafting the request, which could be avoided with this rulemaking.

Furthermore, CBP's country of origin determinations sometimes result in an imported good being determined to be a product of Canada or Mexico for some customs purposes and a good of a third country for other purposes. This rulemaking would eliminate these different determinations, which would standardize country of origin determinations for non-preferential purposes for goods imported from the USMCA countries of Canada and Mexico. CBP's application of the part 102 rules would not, however, affect similar determinations made by other agencies, such as the Department of Commerce's scope determinations in antidumping or countervailing duty proceedings (*see* 19 CFR 351.225). This standardized approach would provide additional benefits to importers, but the extent of these benefits is unknown. CBP requests public comments on the benefits of this change to importers. Although this rulemaking would eliminate the need for some importers to request case-by-case country of origin determinations for non-preferential purposes, it may require such importers to now request classification determinations for their goods imported from Canada and Mexico. The extent of these new classification requests is unknown. To the extent that importers would need to request additional classification determinations in place of case-by-case adjudications, the benefits of this rulemaking to importers would be lower. CBP requests public comments on any other benefits of this rulemaking to importers.

As previously stated, CBP issued 52 non-preferential determinations adjudicated on a case-by-case basis for goods imported from Canada and Mexico from October 2019 to December 2020. This rulemaking would eliminate the need for CBP to make such case-by-case determinations for similar goods imported from Canada and Mexico in the future. The current method for CBP to determine country of origin on a case-by-case basis for non-preferential purposes is generally more time and resource-intensive than the tariff-shift method. For CBP, country of origin determinations for non-preferential purposes based on case-by-case adjudications are highly individual, fact-intensive exercises. This rulemaking would largely make it easier for CBP to administer rules of origin for non-preferential country of origin determinations for goods imported from Canada and Mexico by employing the codified part 102 rules for both country of origin marking and other non-preferential purposes. By eliminating the need for importers to request non-preferential case-by-case determinations of their goods from Canada and Mexico, CBP would save an average of 5 hours to 40 hours currently dedicated to each case-by-case adjudication. This would translate to a time cost saving of between $494.90 and $3,959.20 based on a CBP attorney's average hourly time value of $98.98.[14] CBP estimates that with this proposed rule, CBP would no longer have to make 52 case-by-case rulings determining the origin of goods imported from Canada or Mexico for non-preferential purposes according to historical data. Considering these forgone determinations and the average time cost per determination, CBP would save approximately $25,735 to $205,878 per year from this rulemaking. These benefits would represent time cost savings to CBP rather than budgetary savings, meaning that CBP could use the savings to perform other agency missions, such as facilitating trade. As previously stated, this rulemaking may increase requests for classifications of goods imported from Canada and Mexico, though the extent of these requests is unknown. To the extent that CBP would need to conduct additional classifications in place of case-by-case adjudications, the benefits of this rulemaking to CBP would be lower.

Net Impact of Rule

In summary, this rulemaking would introduce costs, revenue changes, and benefits to importers and the U.S. Government. Some importers, for example, whose goods are subject to inconsistent origin determinations under the current practice, may incur minor costs to adjust their inventory tracking systems, ACE entries, and business practices to reflect the new country of origin determination for other non-preferential purposes, as described above. Transitioning to the proposed tariff shift system could also lead to an increase or decrease in non-preferential payments from importers, which would lead to an equal increase or decrease in revenue to the U.S. Government. The exact amounts of these costs and revenue changes are unknown, but they should be small considering the tariff shift methodology implements the same substantial transformation standard as the existing case-by-case method. Additionally, the rule would implement a simpler, standardized administration system for country of origin determinations made by CBP for all non-preferential purposes for goods imported from Canada and Mexico that would save importers and the U.S. Government time and resources. Importers could save at least an estimated $13,050 in time costs annually from this rulemaking, while the U.S. Government could save between $25,735 and $205,878 in time costs each year. Overall, CBP believes this rulemaking's benefits would outweigh the costs.

B. Regulatory Flexibility Act

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

This rulemaking proposes to expand the scope of the 19 CFR part 102 rules to provide that those rules are to be generally applicable to all non-preferential country of origin determinations made by CBP for goods imported from the USMCA countries of Canada and Mexico. With this change,

estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations ($28.8875) divided by the calculated average of the 2020 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category ($19.3725). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004–December 2020, ''Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004–2020.'' March 2021. Available at *https://www.bls.gov/web/ecec/ececqrtn.pdf.* Accessed June 1, 2021.

[14] CBP bases this wage on the FY 2019 salary, benefits, and non-salary costs (*i.e.,* fully loaded wage) of the national average of CBP attorney positions.

country of origin marking and all other non-preferential country of origin determinations made by CBP for goods imported from Canada or Mexico would be based on substantial transformations occurring with tariff shifts as defined under part 102. CBP's application of the part 102 rules would not, however, affect similar determinations made by other agencies, such as the Department of Commerce's scope determinations in antidumping or countervailing duty proceedings (*see* 19 CFR 351.225).

In FY 2019, 38,832 importers [15] made 2.6 million non-NAFTA-preference entries of goods from Canada and Mexico, valued at $155 billion.[16] All of these entries were subject to non-preferential country of origin marking requirements, while some were also subject to other non-preferential country of origin determinations, like trade remedies, that involve case-by-case adjudication. CBP does not have precise data on the number of importers who entered goods from Canada and Mexico that were subject to country of origin requirements for marking and another non-preferential purpose that would be affected by this rulemaking. Based on available FY 2019 data on goods from Canada and Mexico subject to part 102 rules for marking and that involve case-by-case adjudication for the non-preferential purposes of Section 201 and Section 232 duties and quotas, as well as the 38,832 importers who entered non-NAFTA preference goods from Canada and Mexico in FY 2019, CBP estimates that this rulemaking could affect between approximately 10,000 and 38,832 unique importers entering goods from the USMCA countries of Canada and Mexico each year. These importers would range from individual buyers (households or businesses) to large businesses across many different industries. Some industries and businesses may be more affected than others, depending on the ultimate country of origin determination and the classification of the merchandise being imported. The exact number of small importers affected by this rulemaking is unknown. However, according to a separate CBP analysis, the vast majority of importers are classified as small businesses. Because this rulemaking would directly affect importers and the vast majority of importers are small businesses, the rule could affect a substantial number of small entities.

[15] Based on unique importer of record numbers of importers who entered goods in FY 2019. In some cases, multiple IOR numbers correspond to the same entity.

[16] These goods were not eligible for the Generalized System of Preferences.

The Regulatory Flexibility Act does not specify thresholds for economic significance but instead gives agencies flexibility to determine the appropriate threshold for a particular rule. Changing from case-by-case adjudications for other non-preferential origin purposes to part 102's tariff shift rules may impose some costs on importers with goods from Canada and Mexico. Importers who switch from using these two determination methods for non-preferential origin purposes to just the part 102 rules with this rulemaking may incur some one-time, minor costs to adjust their inventory tracking systems and Automated Commercial Environment entries to reflect the part 102-based non-marking-related, non-preferential country of origin for their goods. As an example, if an importer has an inventory tracking system that identifies the non-marking, non-preferential country of origin for its goods from Canada and Mexico based on existing case-by-case adjudication rules, with this rulemaking, that importer may need to revise the system to ensure that it identifies the goods based on the part 102 rules if the importer is importing goods subject to inconsistent origin determinations under the current practice. These determinations should match the country of origin determinations that importers must already make for non-preferential marking purposes. According to representatives of the Commercial Operations Advisory Committee, these costs will be approximately $2,000-$3,000 per company.

Some importers who source the same goods from Canada or Mexico and another country may also need to adjust their business practices to ensure that they properly use the part 102 rules for customs non-preferential country of origin purposes when the good is sourced from Canada or Mexico once this rulemaking is in effect and use case-by-case adjudications for any goods sourced outside of Canada or Mexico that are subject to non-preferential treatment. According to representatives of the Commercial Operations Advisory Committee, these costs are minimal. For mid to large companies, these costs would total at most $2,000 to $3,000 (note that this is in addition to a similar estimate above). Smaller companies would have smaller costs.

CBP does not believe that these costs, a maximum of $4,000–$6,000, would have a significant economic impact on importers, including those considered small under the RFA. The annual value of importations average $4 million per importer, so these one-time costs make up less than one percent of the value of their importations. In addition, trade members have expressed that the non-monetized benefits of operating under a single set of rules well outweigh the minimal costs to comply with this rulemaking. Therefore, CBP certifies that this rulemaking, if finalized, will not have a significant economic impact on a substantial number of small entities. CBP welcomes comments on this conclusion.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. CBP has determined that there is no collection of information that requires a control number assigned by the Office of Management and Budget.

Signing Authority

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

List of Subjects

19 CFR Part 102

Canada, Customs duties and inspections, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 177

Administrative practice and procedure, Customs duties and inspection, Government procurement, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons given above, it is proposed to amend parts 102 and 177 as set forth below:

PART 102—RULES OF ORIGIN

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

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3592, 4513.

■ 2. Amend § 102.0 by revising the second sentence and adding four sentences after the second sentence to read as follows:

§ 102.0 Scope.

* * * For goods imported into the United States from Canada or Mexico and entered for consumption, or

withdrawn from warehouse for consumption, before [EFFECTIVE DATE OF FINAL RULE], these specific purposes are: country of origin marking; determining the rate of duty and staging category applicable to originating textile and apparel products as set out in Section 2 (Tariff Elimination) of Annex 300–B (Textile and Apparel Goods) under NAFTA; and determining the rate of duty and staging category applicable to an originating good as set out in Annex 302.2 (Tariff Elimination) under NAFTA. CBP will determine the country of origin for all non-preferential purposes for goods imported into the United States from Canada or Mexico and entered for consumption, or withdrawn from warehouse for consumption, on or after [EFFECTIVE DATE OF FINAL RULE], using the rules set forth in §§ 102.1 through 102.18 and 102.20. The rules in this part regarding goods wholly obtained or produced in a country are intended to apply consistently for all such purposes. The rules in this part which determine when a good becomes a new and different article or a new or different article of commerce as a result of manufacturing processes in a given country are also intended to apply consistently for all purposes where this requirement exists for ''country of origin'' or ''product of'' determinations made by CBP for goods imported from Canada or Mexico. The rules in this part do not affect similar determinations made by other agencies, such as the Department of Commerce's scope determinations in antidumping or countervailing duty proceedings (see 19 CFR 351.225). * * *

PART 177—ADMINISTRATIVE RULINGS

■ 3. 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 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625, 2515.

■ 4. Amend § 177.22 by adding a sentence to the end of paragraph (a) to read as follows:

§ 177.22 Definitions.

(a) * * * (For goods imported into the United States after processing in Canada or Mexico and entered for consumption, or withdrawn from warehouse for consumption, on or after [EFFECTIVE DATE OF FINAL RULE], substantial transformation will be determined using the rules set forth in §§ 102.1 through 102.18 and 102.20.)

* * * * *

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

Approved:

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2021–14265 Filed 7–1–21; 11:15 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2021–0006]

RIN 0651–AD53

Standard for Presentation of Nucleotide and Amino Acid Sequence Listings Using XML (eXtensible Markup Language) in Patent Applications To Implement WIPO Standard ST.26; Incorporation by Reference

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is proposing to revise the rules of practice for submitting biological sequence data associated with disclosures of nucleotide and amino acid sequences in patent applications by incorporating by reference the provisions of Standard ST.26 into the USPTO rules. Other conforming changes to accommodate for proposed new rules of practice based on the new standard are also included. These proposed amendments would apply to international and national applications filed on or after January 1, 2022. In addition to simplifying the process for applicants filing in multiple countries, a requirement to submit a single sequence listing in eXtensible Mark-up Language (XML) format will result in better preservation, accessibility, and sorting of the submitted sequence data for the public.

DATES: Comments must be received by September 7, 2021 to ensure consideration.

ADDRESSES: For reasons of Government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via *www.regulations.gov,* enter docket number PTO–P–2021–0006 on the homepage and click ''Search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice and click on the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal website (*www.regulations.gov*) for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Mary C. Till, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, by email at *Mary.Till@uspto.gov;* or Ali Salimi, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, by email at *Ali.Salimi@uspto.gov.* Contact via telephone at 571–272–7704 for special instructions on submission of comments.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

a. Summary of Changes

Standard ST.26 is the new international standard developed by the World Intellectual Property Organization (WIPO) and member states and adopted by the same. Under Standard ST.26, patent applications that contain disclosures of nucleotides and/or amino acid sequence(s) must present