

20, and the chemical species noted are generated by physical and chemical interactions not associated with the broad range of license activities covered by Part 20.

Thus, based on review of the referenced studies, NRC does not believe that these studies provide sufficient support for a revision to the limits and values in Part 20 because of the uncertainty in the levels of exposure in the war arena; differences in exposure scenarios; potential confounding effects of exposures to other environmental pollutants; and differences between the uranium doses evaluated in the studies and the occupational and public doses that are likely to be received given NRC's current occupational and effluent limits. In addition, the studies referenced do not provide dose-response information that would be necessary to revise NRC's uranium chemical exposure limits in a meaningful way. These studies also generally note that caution should be used in interpreting results given and that further investigations should be made. Other commenters on the petition noted that data in the studies are either already addressed by existing regulations or are premature to influence public policy with respect to the issues NRC is considering.

(5) Relationship of this Rulemaking Petition to Petitions Submitted Pursuant to 10 CFR 2.206.

The request made by the petitioner in this petition for rulemaking was limited to changes to the 10 CFR part 20 occupational exposure limits, effluent limits, and solubility categorization of heavy metal nuclides, with a particular focus on uranium. The petitioner did not directly raise specific concerns with regulations governing the licensing and operations of DU munitions licensees in his rulemaking petition. As noted in Section I of this document, on April 3, 2005, the petitioner filed a separate petition (ML051240497) under NRC's § 2.206 related to the licensing and operations of DU munitions licensees.

The NRC denied the petitioner's initial § 2.206 petition (ML051240497) on its merits in a decision dated December 30, 2005 (ML053460450). The petitioner submitted two additional § 2.206 petitions on this subject dated July 12, 2006 (ML062140659), and December 2, 2006 (ML070080059). The NRC rejected both of these petitions by letters dated September 26, 2006 (ML062640210), and May 4, 2007 (ML071170288), respectively. The NRC's § 2.206 denial and rejection letters referenced this rulemaking proceeding to the extent that the petitioner's requests constituted a

generic concern about the nature and magnitude of safety hazards associated with inhaled byproducts of DU and the adequacy of NRC regulations pertaining to limits for ingestion and inhalation occupational values, effluent concentrations, and releases to sewers. With regard to these generic concerns and based on the information reviewed in evaluating this petition for rulemaking, the NRC believes that the occupational exposure and effluent limits for uranium contained in Part 20—which apply to DU munitions licensees—are adequate to protect public health and safety, and, therefore, the NRC does not believe that changes in the regulations governing licensed use of DU munitions are required at this time. As stated in the NRC's May 4, 2007, letter to the petitioner (ML071170288), the NRC does not have the statutory authority to regulate foreign or combat use of DU munitions.

#### IV. Conclusion

NRC is denying the petition because current NRC regulations have a sound scientific and technical basis and provide adequate protection of public health and safety. In developing these regulations, NRC considered both the radiological and chemical toxicity of uranium, ultimately adopting the TLV for uranium established by the ACGIH. The ACGIH is an expert body in the area of chemical toxicity and federal guidance recommends using ACGIH limits when setting chemical exposure limits. As discussed in Section III(1) of this document, the ACGIH has a process for updating TLVs but has not updated the uranium TLV at this time. The information provided by the petitioner does not provide a sufficient reason to initiate a revision of NRC's existing requirements. Specifically, the petitioner has not presented sufficient peer-reviewed data, pertinent to the types and levels of exposures associated with the concentration values used in Appendix B to 10 CFR part 20, to provide a sufficient reason for NRC to initiate a revision of its regulations. Thus, the NRC has decided not to expend limited resources initiating a rulemaking at this time.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 11th day of July, 2008.

For the Nuclear Regulatory Commission.

**R.W. Borchardt,**

*Executive Director for Operations.*

[FR Doc. E8-17108 Filed 7-24-08; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Parts 4, 7, 10, 102, 134 and 177

[USCBP-2007-0100]

RIN 1505-AB49

### Uniform Rules of Origin for Imported Merchandise

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the U.S. Customs and Border Protection ("CBP") Regulations to establish uniform rules governing CBP determinations of the country of origin of imported merchandise. This proposal would extend application of the country of origin rules codified in 19 CFR part 102. Those rules have proven to be more objective and transparent and provide greater predictability in determining the country of origin of imported merchandise than the system of case-by-case adjudication they would replace. The proposed change also will aid an importer's exercise of reasonable care. In addition, this document proposes to amend the country of origin rules applicable to pipe fittings and flanges, printed greeting cards, glass optical fiber, and rice preparations. Finally, this document proposes amendments to the textile regulations set forth in § 102.21 to make corrections so that the regulations reflect the language of section 334(b)(5) of the Uruguay Round Agreement Act.

**DATES:** Comments must be received on or before September 23, 2008.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2007-0100.

- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any

personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Ned Leigh, Valuation and Special Programs, Office of International Trade, 202-572-8827; Heather K. Pinnock, Tariff Classification and Marking, Office of International Trade, 202-572-8828.

#### **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 the proposed rule. 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 proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

##### **II. Background**

CBP notes initially that in this document, references to the U.S. Customs Service or Customs concern the former U.S. Customs Service or actions undertaken by the former U.S. Customs Service prior to its transfer to the Department of Homeland Security ("DHS") under the Homeland Security Act and the Reorganization Plan Modification for DHS of January 30, 2003.

All merchandise imported into the United States is subject to a country of origin determination. The origin of imported goods is determined for various purposes, including admissibility into the United States,

eligibility for preferential trade programs, country of origin marking requirements, and administration of the U.S. textile import program.

It is important to note that origin-related determinations are also made in the context of the scope of investigations, orders or measures pertinent to the administration of the trade remedy laws and application of trade relief (e.g., antidumping and countervailing duties under Title VII of the Tariff Act of 1930, as amended, and safeguard remedies imposed pursuant to sections 201 or 421 of the Trade Act of 1974). Although such trade remedy origin-related scope determinations generally mirror the origin determinations made by CBP in its administration of the customs laws, they may differ, and in such cases, the origin-related scope determinations made by the administering authority (the Department of Commerce), and not CBP, are dispositive for purposes of administering the trade remedy laws.<sup>1</sup>

Under current regulations, there are two primary methods that CBP uses to determine the country of origin of imported goods that are processed in, or contain materials from, more than one country. One method employs case-by-case adjudication to determine whether goods have been "substantially transformed" in a particular country, and the other method employs codified rules, also used to determine whether a good has been "substantially transformed," primarily expressed through changes in tariff classification. The substantial transformation standard has developed from a series of federal court decisions issued over many years. The standard was first applied by the U.S. Supreme Court in the case of *Anheuser-Busch Brewing Association v. United States*, 207 U.S. 556 (1908). In that case, the Supreme Court considered whether the cleaning, sanitizing, and coating of imported beer bottle corks constituted a "manufacture" of the corks in the United States for drawback purposes. The Court concluded that the articles were not manufactured in the United States because the imported corks remained corks after the processing. According to the court, manufacture requires a "transformation; a new and different article must emerge, 'having a distinctive name, character or use.'" *Anheuser-Busch*, 207 U.S. at 562 (quoting *Hartranft v. Wiegmann*, 121 U.S. 609, 615 (1887)).

<sup>1</sup> The origin-related scope determination of the administering authority (Department of Commerce) is for trade remedy purposes only; it does not alter CBP's origin determination for customs purposes unrelated to trade remedies.

In *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940), the U.S. Court of Customs and Patent Appeals applied the substantial transformation standard in a country of origin marking context, holding that imported wood brush blocks and toothbrush handles became products of the United States when processed into hairbrushes and toothbrushes, respectively. The court stated that the imported articles lost their identity and became "an integral part of a new article having a new name, character, and use." Under this standard, a good must be substantially transformed in a country in order for it to be considered a product of that country. Because in almost all cases there can be only one country of origin for rules of origin purposes, the standard refers to the country in which the last substantial transformation occurs.

Despite its heritage and apparent straightforwardness, administration of the substantial transformation standard has not been without problems. These problems derive in large part from the inherently subjective nature of judgments made in case-by-case adjudications as to what constitutes a new and different article and whether processing has resulted in a new name, character, and use. The substantial transformation standard has evolved over many years through numerous court decisions and CBP administrative rulings. Because the rule has been applied on a case-by-case basis to a wide range of scenarios and has frequently involved consideration of multiple criteria, the substantial transformation standard has been difficult for the courts and CBP to apply consistently and has often resulted in a lack of predictability and certainty for both CBP and the trade community.

In an effort to simplify and standardize country of origin determinations, Customs developed a codified method that uses specified changes in tariff classification (tariff shifts) and other rules to express the substantial transformation concept. Under this codified method, the substantial transformation that an imported good must undergo in order to be deemed a good of the country where the change occurred is usually expressed in terms of a specified tariff shift as a result of further processing.

The U.S. Customs Service originally proposed simplified and standardized rules for determining a product's country of origin in a document published in the **Federal Register** on September 25, 1991 (56 FR 48448), proposing to amend the CBP Regulations to establish in Part 102,

uniform rules governing the determination of the country of origin of imported merchandise that is wholly obtained or produced in a single country. Customs refined and expanded the original proposal with a second proposal that was published in the **Federal Register** on January 3, 1994 (59 FR 141). In a document published in the **Federal Register** (59 FR 110) on the same day, Customs applied the proposed rules on an interim basis to trade among the NAFTA countries, in order to implement a commitment under Annex 311 of NAFTA. Based on a review of the comments received in response to the January 3, 1994, proposal, Customs published another document in the **Federal Register** on May 5, 1995 (60 FR 22312) which, in part, provided further clarification and explanation of the intent behind the proposed uniform rule concept. Later that year, Congress, in section 334 of the Uruguay Round Agreements Act, mandated a codified approach for determining the origin of textile and apparel products, except for those textile and apparel products that are products of "a country that is party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1987." (This includes only the U.S.-Israel FTA.)

In Treasury Decision (T.D.) 96-48, however, published in the **Federal Register** on June 6, 1996 (61 FR 28932), Customs announced its decision not to apply the Part 102 rules more broadly than to trade among NAFTA countries, at that time. Customs noted, however, that "the proposal to extend section 102 to all trade \* \* \* should remain under consideration for implementation at a later date." (In this context, it should also be noted that in *Bestfoods v. United States*, 165 F.3d 1371 (Fed. Cir. 1999), the U.S. Court of Appeals for the Federal Circuit found Part 102 valid and that it was not necessary for Congress to amend the marking statute (19 U.S.C. 1304) to effect that change because "nothing in the statute requires continued adherence to the case-by-case approach." (165 F.3d at 1375-76.) Shortly after the June publication of T.D. 96-48, Customs, on July 1, 1996, gave effect to section 334 of the Uruguay Round Agreements Act by implementing the Part 102 rules of origin relating to trade in textile and apparel products (found at 19 CFR 102.21), which are uniformly applicable to all textile and apparel imports except for purposes of determining whether goods originate in Israel, (see T.D. 95-

69, published in the **Federal Register** on September 5, 1995 (60 FR 46188)).

Consequently, since 1996 the Part 102 rules have applied to all imports from Canada and Mexico, and nearly all imports of textile products, accounting for approximately 40 percent of total U.S. imports. As a result, both the importing community and CBP have extensive experience in applying the Part 102 rules to goods from Canada and Mexico. CBP's experience in administering country of origin rules using the codified method has been that, by virtue of their greater specificity and transparency, codified rules result in determinations that are more objective and predictable than under the case-by-case adjudication method.

Therefore, CBP is proposing to extend application of the Part 102 rules of origin to all country of origin determinations made under the customs and related laws and the navigation laws of the United States, unless otherwise specified.<sup>2</sup>

Specifically with regard to determining origin for purposes of applying preferential trade agreements, the Part 102 rules will not be used where agreements specify another origin test for that purpose. For example, application of tariff benefits under NAFTA are determined by the origin rules set out in Chapter Four of that agreement. Moreover, the Part 102 rules will not be used for making preference determinations for goods other than textile and apparel goods under the United States-Israel and United States-Jordan Free Trade Agreements because it has been the understanding of U.S. negotiators and trade officials of those governments that the case-by-case method would be used for making origin determinations for preference purposes under those agreements. CBP will, however, use the appropriate sections of Part 102 to make all other origin determinations (non-preference or preference) regarding goods from Israel and Jordan.

The Part 102 rules of origin will, however, be used to administer those free trade agreements already negotiated that use the substantial transformation standard as part of the test to determine

whether products qualify for reduced tariffs where under these agreements the trade negotiators had reached an understanding that the codified rules under Part 102 should guide those determinations, to date, the United States-Bahrain and United States-Morocco Free Trade Agreements. It is also CBP's intent to apply the Part 102 rules to any FTA negotiated in the future using the substantial transformation standard, unless otherwise specified.

#### A. Reasonable Care

Under section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify, and determine the value of imported merchandise and to provide any other information necessary to enable CBP to assess duties properly, collect accurate statistics, and determine whether any other applicable legal requirements have been met. An importer's reasonable care obligations include ensuring that CBP entry documents reflect the correct country of origin of imported merchandise.

As explained above, CBP believes that the proposed extension of the Part 102 country of origin rules to all trade will result in determinations that are more objective, transparent, and predictable and will therefore facilitate the exercise of reasonable care by importers with respect to their obligations regarding the identification of the proper country of origin of imported merchandise.

#### B. Tariff Shift Rules for Pipe Fittings and Flanges, Printed Greeting Cards, Glass Optical Fiber, Rice Preparations, and Certain Textile Products

After over 10 years of concurrently administering the codified and the case-by-case methods for determining origin, CBP has identified five specific product areas in which the outcomes of the two systems have been inconsistent and for which we believe the codified rules in Part 102 should be altered: Pipe fittings and flanges, greeting cards, glass optical fiber, rice preparations, and certain textile products. The disparate outcomes for pipe fittings and flanges have been known to exist since the original proposal for the Part 102 rules; they stem from disparate outcomes in earlier adjudications under the case-by-case method. The inconsistencies for printed greeting cards, glass optical fiber, and certain textile products stem from errors in drafting Part 102. The change for rice preparations stems from a recent change in practice by CBP.

<sup>2</sup>Origin-related scope determinations made by the administering authority for trade remedy purposes (Department of Commerce) may differ from the origin determinations made by CBP for customs purposes. For purposes of administering the trade remedy laws, the origin-related scope determinations made by the administering authority, not CBP, are controlling. However, the origin-related scope determination of the administering authority is for trade remedy purposes only; it does not alter CBP's origin determination for customs purposes unrelated to trade remedies.

## 1. Pipe Fittings and Flanges

In *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499, C.D. 4026, 313 F. Supp. 951 (1970), *appeal dismissed*, 57 CCPA 141 (1970), the U.S. Customs Court determined that the U.S. processor of imported rough steel forgings who subjected the forgings to several machining processes, such as boring, facing, spot facing, drilling, tapering, threading, bevelling, and heating and compressing, was the ultimate purchaser of the forgings for purposes of the country of origin marking statute, 19 U.S.C. 1304, and therefore the resulting finished fittings and flanges were not required to carry country of origin markings. In determining that the steel forgings were substantially transformed in the United States, the court found it relevant that the imported forgings were changed from producers' goods to consumers' goods.

Customs noted in a document published in the **Federal Register** on May 5, 1995 (60 FR 22312, 22315), that the Part 102 rules of origin do not stipulate that all forgings manufactured into fittings and flanges undergo a substantial transformation, and that the U.S. Court of International Trade has not employed the "consumer-good-versus-producer-good" analysis used by the Customs Court in *Midwood*. Customs further stated that it believed that the proposed Part 102 tariff shift rules relating to fittings and flanges would be sustained by the U.S. Court of International Trade in light of more recent court decisions as well as changes in industry practices since the date of the *Midwood* decision (1970). Following the 1995 notice, in T.D. 00-15, "*Final Interpretation: Application of Producers' Good Versus Consumers' Good Test in Determining Country of Origin Marking*," published in the **Federal Register** on March 12, 2000 (65 FR 13827), Customs announced that it would no longer rely on the distinction between producers' goods and consumers' goods in making origin determinations and that all pipe fittings and flanges produced in the United States from imported forgings must be marked with the country of origin of the imported forgings. In addition, Customs informed interested parties in a notice published in the Customs Bulletin and Decisions on June 7, 2000 (34 Cust. B. & Dec. 51 (2000)), that it intended to revoke or modify (as applicable), pursuant to 19 U.S.C. 1625(c)(1), the pipe fitting and flange Customs rulings that used the distinction between producers' and consumers' goods in making country of origin marking

determinations. The notice of final revocation/modification was published in the Customs Bulletin and Decisions on August 2, 2000 (34 Cust. B. & Dec. 10 (2000)).

In *Boltex Manufacturing Co. v. United States*, 24 CIT 972, 140 F. Supp. 2d 1339 (2000), the U.S. Court of International Trade vacated T.D. 00-15, determining that Customs had abused its discretion by encroaching on judicial authority and relying on a legal conclusion in deciding that *Midwood* and the producers' goods-consumers' goods distinction was no longer good law, rather than engaging in and providing a reasoned factual analysis in support of its determination that the forgings had to be marked. *Id.* at 1347, 1348. Accordingly, CBP rescinded the action announced in the August 2, 2000, Customs Bulletin notice, which had relied on vacated T.D. 00-15. Because the court in *Boltex* stated that CBP need not rely on *Midwood* in all instances, and that it may well be possible that *Midwood* would be decided differently today, CBP published in the Customs Bulletin and Decisions on November 21, 2001 (35 Cust. B. & Dec. 35 (2001)), a notice of proposed modification/revocation of rulings explaining why *Midwood* should no longer be followed for determining the country of origin applicable to pipe fittings and flanges. Following a review of the comments received and after further consideration of the judicial guidance in *Boltex*, CBP believes the codification of the substantial transformation standard as it relates to the processing of forgings into fittings and flanges is best reflected by the proposed rule set forth below, which is consistent with the result in *Midwood*.

Section 102.20(n) (Section XV: Chapters 72 through 83) of the CBP Regulations (19 CFR 102.20(n)) sets forth the tariff shift rule for determining the country of origin of goods imported from Canada or Mexico that are classified in headings 7301 through 7307, HTSUS, which include forgings, pipe fittings, and flanges of heading 7307. According to the rule, which requires "[a] change to heading 7301 through 7307 from any other heading, including another heading within that group," the processing of unfinished pipe fittings and flanges into finished goods does not result in a change of origin for articles imported from a NAFTA country. As noted above, this rule was intended to codify what CBP believed reflected current industry practices and general principles enunciated by the courts since the *Midwood* decision. Based on the comments received in response to the

November 21, 2001, Customs Bulletin notice, and in considering *Boltex*, CBP is proposing to amend the Part 102 rule for goods classified in heading 7301 through 7307 to provide (consistent with the result in *Midwood*) for a change within heading 7307 from fitting forgings or flange forgings to fittings or flanges made ready for commercial use by certain processing, including bevelling, bore threading, center or step boring, face machining, heat treating, recoining or resizing, taper boring, machining ends or surfaces other than a gasket face, drilling bolt holes, and burring or shot blasting.

## 2. Greeting Cards

In this document, CBP also proposes to amend the specific change in tariff classification rule set forth in § 102.20(j) (Section X, Chapters 47 through 49) for headings 4901 through 4911 of the HTSUS, which includes printed greeting cards. This tariff shift rule currently provides for "[a] change to heading 4901 through 4911 from any other heading, including another heading within that group." With respect to greeting cards, the effect of this rule is a change in origin of an unfinished greeting card bearing no textual message (classified in heading 4911) when it is further processed in a second country by the addition of printed text (becoming a good of heading 4909). However, an unfinished greeting card bearing some printed text (classified in heading 4909) will not satisfy the tariff shift rule (and therefore will not undergo a change in origin) when it is further processed in a second country, regardless of the work performed, as the card remains classified in heading 4909. See Headquarters Ruling Letter ("HRL") 962603, dated May 14, 2002.

To avoid such disparate origin results for greeting cards, this document proposes to amend the tariff shift rule for HTSUS headings 4901 through 4911 in § 102.21(j) by the creation of a specific rule for heading 4909, providing for a change to that heading from any other heading except from heading 4911 when the change is a result of adding text. The effect of this amendment is to enable the country of origin of all printed greeting cards to be determined according to the country of initial printing of literary text, photographs, graphic designs, or illustrations. This revised rule for goods of heading 4909, which reflects CBP practice in applying the substantial transformation standard to printed materials, will facilitate application of the tariff shift rule when greeting cards

classified under 4909, HTSUS, are printed in multiple countries.

### 3. Glass Optical Fiber

CBP is also proposing in this document to amend the specific change in tariff classification rule set forth in § 102.20(q) (Section XVIII, Chapters 90 through 92) for subheading 9001.10 of the HTSUS, which encompasses optical fibers and optical fiber bundles and cables. This tariff shift rule presently provides for “[a] change to subheading 9001.10 from any other subheading, except from subheading 8544.70.”

In HRL 560660 dated April 9, 1999, Customs considered whether imported glass preforms, which are solid glass rods made from fused silica, are substantially transformed in the United States for purposes of the country of origin marking statute (19 U.S.C. 1304) when “drawn” to create glass optical fiber. Customs determined that no substantial transformation results from the drawing process as the information presented established that the specifications and qualities of the optical fiber are predetermined by the chemical and other critical attributes of the glass preform. Therefore, it was determined that the optical fiber must be marked to indicate that its country of origin is the country where the preform was produced.

Glass preforms are classified in heading 7002, HTSUS, while glass optical fiber is classified in subheading 9001.10.00, HTSUS. Under the current tariff shift rule in § 102.20(q) for subheading 9001.10, HTSUS, a change in origin results when a glass preform is drawn into optical fiber. To eliminate the inconsistency between the country of origin determination in HRL 560660 and the change in tariff classification rule for HTSUS subheading 9001.10, this document proposes to amend the tariff shift rule by providing for a change to subheading 9001.10 from any other subheading, except from subheading 8544.70 or glass preforms of heading 7002.

### 4. Rice Preparations

CBP is also proposing in this document to amend the specific change in tariff classification rule set forth in § 102.20(d) (Section IV, Chapters 16 through 24) for subheading 1904.90 of the HTSUS, which encompasses certain rice preparations. This tariff shift rule presently provides for “[a] change to subheading 1904.90 from any other heading.”

In HRL 967925 dated February 28, 2006, CBP considered whether rice is substantially transformed for purposes of the country of origin marking statute

(19 U.S.C. 1304) when it was processed with 2% water, 0.4% sunflower oil, 0.2% salt and 0.4% soy lecithin, placed into cups and sealed, and thermally processed. The final rice preparation was ready for consumption after the consumer places the cup in a microwave. Customs determined that no substantial transformation of the rice results from the additional mixture with the ingredients or thermal processing as the essential character of the rice was maintained. The rice was still discernable in the final product and the product was marketed as a rice product. Therefore, it was determined that the rice preparation must be marked to indicate that its country of origin is the country or countries where the rice originated. This outcome is in accord with *National Juice Products Association v. United States*, 628 F. Supp. 978 (CIT 1986), where the court held that foreign manufacturing concentrate processed into frozen concentrated orange juice in the United States and reconstituted orange juice was not substantially transformed in the United States.

Rice is classified in heading 1006, HTSUS, and in subheading 1008.90, HTSUS, as other cereals (including wild rice), while rice preparations are classified in subheading 1904.90, HTSUS. Under the current tariff shift rule in § 102.20(d) for subheading 1904.90, HTSUS, a change in origin results when rice is made into a rice preparation. To eliminate the inconsistency between the country of origin determination in HRL 967925 and the change in tariff classification rule for HTSUS subheading 1904.90, this document proposes to amend the tariff shift rule by providing for a change to subheading 1904.90 from any other heading, except from heading 1006 or wild rice of subheading 1008.90.

As changes in law necessitate, or when it is determined that a tariff shift rule in Part 102 does not reflect the substantial transformation standard, appropriate changes to the affected specific rules may be made.

### 5. Corrections to the Rules of Origin for Textile and Apparel Products

It has come to CBP's attention that the rules of origin for textile and apparel products set forth in 19 CFR 102.21 are out of alignment with the language of the statute, 19 U.S.C. 3592, in two instances. With regard to fabrics of chapter 59 of the Harmonized Tariff Schedule of the United States (HTSUS), the statute provides that a fabric of chapter 59 derives its origin from where “the constituent fibers, filaments, or yarns are woven, knitted, needled,

tufted, felted, entangled, or transformed by any other fabric-making process.” See 19 U.S.C. 3592(b)(1)(C). However, in the case of plastic laminated fabrics of heading 5903, HTSUS, sequential application of the § 102.21 regulations allows for the origin of laminated plastic fabrics to derive from the lamination, or assembly, process and not from the fabric-formation process as intended by the statute. In order to align the regulation with the statute, CBP proposes to amend § 102.21(c)(3)(ii) by adding “fabrics of chapter 59 and” after “Except for” and before “goods of”. The amended text would read “Except for fabrics of chapter 59 and goods of heading \* \* \*” This amendment would preclude the application of the wholly assembled rule set forth in § 102.21(c)(3)(ii) to fabrics of chapter 59 and lead to application of the most important assembly or manufacturing process rule set forth in § 102.21(c)(4). As the statute makes clear that fabric formation is the origin conferring process for fabrics of chapter 59, the statute would be followed in applying § 102.21(c)(4) and determining the most important manufacturing process for purposes of determining the origin of fabrics of chapter 59.

In addition, CBP has become aware of an oversight in the drafting of the tariff shift rule for goods of heading 6212 set forth in § 102.21(e). As currently written, “brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted,” of heading 6212 are grouped with goods of headings 6210 and 6211. The tariff shift rules for these goods do not provide for the possibility of knit to shape goods. The body supporting garments of heading 6212 may be knitted or crocheted and may be knit to shape. Therefore, in order to ensure that a knit to shape good of heading 6212 is found to derive its origin from where the good was knit to shape in accordance with 19 U.S.C. 3592(b)(2)(A)(ii), CBP proposes to amend § 102.21(e) as follows: (1) The tariff shift rules currently designated for headings “6210—6212” will be designated as for headings “6210—6211”; (2) separate tariff shift rules will be added to § 102.21(e) for heading 6212 which will repeat the current rules applicable for that heading with the addition of language limiting application of the rules to goods which are not knit to shape and an additional tariff shift rule will be added for knit to shape goods. The proposed tariff shift rules for heading 6212 will read:

(1) If the good is not knit to shape and consists of two or more component parts, a

change to an assembled good of heading 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

(2) If the good is not knit to shape and does not consist of two or more component parts, a change to heading 6212 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 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.

(3) If the good is knit to shape, a change to heading 6212 from any other heading, provided that the knit to shape components are knit in a single country, territory, or insular possession.

### C. Relation to International Standardization Effort

The United States has been an active participant in the ongoing effort to standardize non-preferential rules of origin on the international level. This effort, under the auspices of the World Trade Organization and in cooperation with the World Customs Organization, also focuses on change in tariff classification as a means to express substantial transformation. When the undertaking began in 1994, participants intended to complete their work within three years. It is still ongoing at this time. This proposal to extend application of the Part 102 rules is in no way intended to supplant U.S. participation or positions in that effort.

### III. Discussion of Proposals

This document proposes to amend Part 102 of the CBP Regulations, § 102.0 (Scope), to set forth the scope of areas for which the rules of origin set forth in Part 102 are to be used to make country of origin determinations. As a result of the proposed changes to § 102.0, the Part 102 rules of origin will be applicable for all purposes for which a “product of” or “country of origin” criterion is prescribed under the customs and related laws, the navigation laws of the United States, and the CBP Regulations, except for the purpose of determining whether a good other than a textile or apparel good is entitled to preferential treatment under our free trade agreements with Israel and Jordan, or unless otherwise specified,<sup>3</sup> or as otherwise provided for

<sup>3</sup> Origin-related scope determinations made by the administering authority for trade remedy purposes (Department of Commerce) may differ from the origin determinations made by CBP for customs purposes. For purposes of administering the trade remedy laws, the origin-related scope determinations made by the administering

by statute. The term “product of” encompasses any requirement that a good be “wholly the growth, product or manufacture” of a country; substantially transformed in a country; a new and different product or a new or different article of commerce as a result of processing performed in a country; or the growth, product or manufacture of a country. In addition, § 102.0 is proposed to be amended by removing the specific reference to the U.S.—Bahrain Free Trade Agreement, as this reference is no longer necessary as a result of the proposed changes described above.

Consistent with the proposed changes to § 102.0 described above, this document also proposes to add a cross-reference to the definition of “wholly obtained or produced in a country” set forth in § 102.1(g) to all provisions in the CBP Regulations where the phrase “wholly the growth, product or manufacture” or a similar phrase is used for origin purposes, except where otherwise defined by statute (e.g., U.S.-Morocco and U.S.-Bahrain Free Trade Agreements). Similarly, CBP proposes to add a cross-reference to the rules of origin in Part 102 to all provisions in the CBP Regulations in which the phrases “country of origin,” “substantial transformation,” a “new and different product,” and a “new and different article of commerce” are used for origin purposes. These proposed amendments affect Parts 4, 7, 10, 102, 134, and 177, CBP Regulations (19 CFR parts 4, 7, 10, 102, 134, and 177).

As a result of the proposed amendments set forth in this document, the Part 102 rules would be used to determine whether a good meets the “product of” criterion for receiving duty preference under General Note (“GN”) 3(a)(iv), HTSUS (U.S. insular possessions); GN 3(a)(v), HTSUS (West Bank, Gaza Strip or qualifying industrial zones); GN 4(b) and (c), HTSUS (Generalized System of Preferences (“GSP”)); GN 7(b), HTSUS (Caribbean Basin Economic Recovery Act (“CBERA”)); GN 10(b), HTSUS (Freely Associated States); GN 11(b), HTSUS (Andean Trade Preferences Act (“ATPA”)); GN 16(b), HTSUS (African Growth and Opportunity Act (“AGOA”)); GN 27(b)(ii), HTSUS (U.S.-Morocco Free Trade Agreement); and GN 30(b)(ii), HTSUS (U.S.-Bahrain Free Trade Agreement). The applicable value-content requirements and any other rules under these programs,

authority, not CBP, are controlling. However, the origin-related scope determination of the administering authority is for trade remedy purposes only; it does not alter CBP’s origin determination for customs purposes unrelated to trade remedies.

however, must still be met in order for a good to qualify for the duty preference.

The proposed amendments to Part 134 concerning country of origin marking also propose that the Part 102 rules would be used to determine both the country of origin of imported foreign articles and whether imported articles that are further processed become goods of the United States for purposes of identifying the goods’ “ultimate purchaser.”

In addition, this document proposes to change the specific tariff shift rules set forth in 19 CFR 102.20 that apply to printed greeting cards classified in heading 4909 of the HTSUS, fittings and flanges classified in heading 7307, HTSUS, glass optical fiber classified in subheading 9001.10, HTSUS, and rice preparations classified in subheading 1904.90, HTSUS.

Finally, this document proposes amendments to the textile regulations set forth in § 102.21 in order to more closely align the regulations with the language of the statute, 19 U.S.C. 3592, and also to remedy an oversight in the drafting of the tariff shift rule for goods of heading 6212 set forth in § 102.21(e).

### IV. The Regulatory Flexibility Act and Executive Order 12866

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 because the amendments reflect recent judicial guidance and standardize country of origin marking requirements for NAFTA and non-NAFTA trade. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

### V. Signing Authority

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

### List of Subjects

#### 19 CFR Part 4

Administrative practice and procedure, Cargo vessels, Coastwise trade, Freight, Imports, Landing, Merchandise, Shipping, Vessels.

## 19 CFR Part 7

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

## 19 CFR Part 10

American goods, Assembly, Customs duties and inspection, Entry, Imports, Preference Programs, Reporting and recordkeeping requirements, Shipments, Trade agreements.

## 19 CFR Part 102

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

## 19 CFR Part 134

Canada, Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Mexico, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

## 19 CFR Part 177

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Rulings, Trade agreements.

### Proposed Amendments to the Regulations

Accordingly, CBP proposes to amend parts 4, 7, 10, 12, 102, 134, and 177 of the CBP Regulations (19 CFR parts 4, 7, 10, 102, 134, and 177) as set forth below:

#### PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. App. 3, 91.

\* \* \* \* \*

2. Section 4.80b is amended by adding a sentence at the end of paragraph (a) to read as follows:

#### § 4.80b Coastwise transportation of merchandise.

(a) \* \* \* For purposes of this section, merchandise is manufactured or processed into a new and different product when it has undergone a change in country of origin under the provisions of §§ 102.1 through 102.21 of this chapter.

\* \* \* \* \*

#### PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANOMO BAY NAVAL STATION

3. The authority citation for part 7 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

4. Section 7.3 is amended by revising paragraph (b) to read as follows:

#### § 7.3 Duty-free treatment of goods imported from insular possessions of the United States other than Puerto Rico.

\* \* \* \* \*

(b) *Origin of goods.* (1) For purposes of this section, and subject to paragraph (b)(2) of this section, goods shall be considered to be the growth, product of, or manufactured or produced in, an insular possession if:

- (i) The goods are wholly the growth or product of the insular possession; or
- (ii) The goods became a new and different article of commerce as a result of production or manufacture performed in the insular possession.

(2) For purposes of this section, the expression “wholly the growth or product” refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter. For purposes of paragraph (b) of this section, a “new and different article of commerce” exists when the country of origin of a good which is produced in an insular possession from foreign materials is determined to be that insular possession under §§ 102.1 through 102.21 of this chapter.

\* \* \* \* \*

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

5. The general authority citation for part 10 continues to read as follows:

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

\* \* \* \* \*

6. 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) of this part.

7. Section 10.14 is amended by revising paragraph (b) 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. For purposes of this section and § 10.12(e) of this part, substantial transformation occurs when the country of origin of a good which is produced in the United States from foreign materials is determined to be the United States under §§ 102.1 through 102.21 of this chapter.

*Example 1.* Unfinished automotive crankshaft forgings, classified in subheading 8483.10, HTSUS, are imported into the United States for further processing. In the United States, the importer machines, drills, and heat treats the forging to produce a finished crankshaft. The finished article also is classified in subheading 8483.10, HTSUS. Under § 102.20 of this chapter, the applicable tariff shift rule for goods classified in subheading 8483.10 requires a change to that subheading from any other subheading. The further processing does not result in the article becoming a product of the United States because the requisite tariff shift is not satisfied. By application of the residual rules in § 102.11, the origin of the finished crankshaft is determined to be the country of origin of the imported forging.

*Example 2.* Optical fiber, classified in subheading 9001.10, HTSUS, is imported into the United States. After importation, the U.S. importer sheaths and insulates the individual optical fibers in color-coated plastic. The further-processed optical fiber is classified in 8544.70, HTSUS. The applicable tariff shift rule in § 102.20 of this chapter for articles classified within subheadings 8544.11 through 8544.70, HTSUS, requires a change in tariff classification from any other subheading, including a subheading within that group, except when the tariff shift results from a simple assembly. Because the further processing results in a change from a good of subheading 9001.10 to a good of subheading 8544.70 (by more than a simple assembly), the tariff shift requirement is satisfied and the finished optical fibers are determined to be products of the United States.

8. 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.

9. Section 10.176 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

§ 10.176 Country of origin criteria.

(a) \* \* \*

(1) \* \* \* For purposes of this section, a "new and different article of commerce" exists when 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 under §§ 102.1 through 102.21 of this chapter.

10. Section 10.191 is amended by revising paragraph (b)(3) to read as follows:

§ 10.191 General.

(b) \* \* \*

(3) Wholly the growth, product, or manufacture. For purposes of § 10.191 through § 10.199, 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.

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

§ 10.195 Country of origin criteria.

(a) \* \* \*

(1) \* \* \* For purposes of this section, a "new and different article of commerce" exists when the country of origin of a good which is produced in a beneficiary country from foreign materials is determined to be that beneficiary country under §§ 102.1 through 102.21 of this chapter.

12. Section 10.199 is amended by adding a sentence at the end of paragraph (e)(1) to read as follows:

§ 10.199 Duty-free entry for certain beverages produced in Canada from Caribbean rum.

(e) \* \* \*

(1) \* \* \* For purposes of this section, 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, and a "new and different article of commerce" exists when the country of origin of a good which is produced in a beneficiary country or the U.S. Virgin Islands from foreign materials is determined to be that beneficiary country or the U.S.

Virgin Islands under §§ 102.1 through 102.20 of this chapter.

13. Section 10.202 is amended by revising paragraph (d) to read as follows:

§ 10.202 Definitions.

(d) Wholly the growth, product, or manufacture. 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.

14. Section 10.205 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 10.205 Country of origin criteria.

(b) New and different article of commerce. For purposes of this section, a "new and different article of commerce" exists when the country of origin of a good which is produced in a beneficiary country from foreign materials is determined to be that beneficiary country under the provisions of §§ 102.1 through 102.21 of this chapter.

15. Section 10.252 is amended by adding a new definition in alphabetical order to read as follows:

§ 10.252 Definitions.

Wholly the growth, product, or manufacture. "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.

16. Section 10.253 is amended by redesignating paragraph (c)(2) as paragraph (c)(3) and by adding a new paragraph (c)(2) to read as follows:

§ 10.253 Articles eligible for preferential treatment.

(2) New and different article of commerce. For purposes of this section, a "new and different article of commerce" exists when the country of origin of a good which is produced in an ATPDEA beneficiary country from foreign materials is determined to be that beneficiary country under the provisions of §§ 102.1 through 102.21 of this chapter.

17. Section 10.769 is amended by revising paragraph (i) to read as follows:

§ 10.769 Definitions.

(i) New or different article of commerce. A "new or different article of commerce" exists when the country of origin of a good which is produced in a Party from foreign materials is determined to be that country under the provisions of §§ 102.1 through 102.21 of this chapter.

PART 102—RULES OF ORIGIN

18. The authority citation for part 102 continues to read as follows:

Authority: 7 U.S.C. 1854, 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

19. 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. Except for the purpose of determining whether goods are entitled to preferential treatment under the U.S.-Israel or U.S.-Jordan FTAs, or unless otherwise specified 4, or as otherwise provided for by statute, the rules set forth in §§ 102.1 through 102.20 apply for all such purposes where a requirement exists to determine the "country of origin" of a good or whether a good is: wholly the growth, product or manufacture of a country; substantially transformed in a country; a new and different product or a new or different article of commerce as a result of processing performed in a country; or the growth, product or manufacture of a country. The rules in §§ 102.1 through 102.20 also apply for determining the country of origin of imported goods for the purposes specified under Annex 311 of the North American Free Trade Agreement ("NAFTA"). The rules for determining the country of origin of textile and apparel products set forth in § 102.21 and § 102.22 also apply for the other purposes stated in those sections. Sections 102.23 through 102.25 set forth certain procedural requirements relating to the importation of apparel products.

20. In the table in § 102.20:

4 Origin-related scope determinations made by the administering authority for trade remedy purposes (Department of Commerce) may differ from the origin determinations made by CBP for customs purposes. For purposes of administering the trade remedy laws, the origin-related scope determinations made by the administering authority, not CBP, are controlling. However, the origin-related scope determination of the administering authority is for trade remedy purposes only; it does not alter CBP's origin determination for customs purposes unrelated to trade remedies.



A. Paragraph (d), titled "Section IV: Chapters 16 through 24," is amended by revising the entry for 1904.90;

B. Paragraph (j), titled "Section X: Chapters 47 through 49," is amended by removing the entry for 4901-4911, and

by adding three new entries for 4901-4908, 4909, and 4910-4911;

C. Paragraph (n), titled "Section XV: Chapters 72 through 83," is amended by revising the entry for 7301-7307; and

D. Paragraph (q), titled "Section XVIII: Chapters 90 through 92," is amended by revising the entry for 9001.10.

The additions and revisions read as follows:

**§ 102.20 Specific rules by tariff classification.**

\* \* \* \* \*

HTSUS	Tariff shift and/or other requirements
*	*
(d) .....	Section IV: Chapters 16 through 24.
*	*
1904.90 .....	A change to subheading 1904.90 from any other heading, except from heading 1006 or wild rice of subheading 1008.90.
*	*
(j) .....	Section X: Chapters 47 through 49.
*	*
4901-4908 .....	A change to heading 4901 through 4908 from any other heading, including another heading within that group.
4909 .....	A change to heading 4909 from any other heading, except from heading 4911 when the change is a result of adding text.
4910-4911 .....	A change to heading 4910 through 4911 from any other heading, including another heading within that group.
*	*
(n) .....	Section XV: Chapters 72 through 83.
*	*
7301-7307 .....	A change to heading 7301 through 7307 from any other heading, including another heading within that group, or a change within heading 7307 from fitting forgings or flange forgings to fittings or flanges made ready for commercial use by: (a) at least one of the following processes: (1) bevelling; (2) threading of the bore; (3) center or step boring; or (4) machining the gasket face; and (b) at least two of the following processes: (1) heat treating; (2) recoining or resizing; (3) taper boring; (4) machining ends or surfaces other than a gasket face; (5) drilling bolt holes; or (6) burring or shot blasting.
*	*
(q) .....	Section XVIII: Chapters 90 through 92.
9001.10 .....	A change to subheading 9001.10 from any other subheading, except from subheading 8544.70 or glass preforms of heading 7002.
*	*

21. Section 102.21 is amended by revising paragraph (c)(3)(ii) and by removing the entry for 6210-6212 and adding new entries for 6210-6211 and 6212 in the table in paragraph (e)(1) to read as follows:

**§ 102.21 Textile and apparel products.**

\* \* \* \* \*

(c) \* \* \*  
(3) \* \* \*  
(ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single

country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

HTSUS	Tariff shift and/or other requirements
*	*
6210-6211 .....	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6211 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
6212 .....	<p>(2) If the good does not consist of two or more component parts, a change to heading 6210 through 6211 from any heading outside that group, 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, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.</p> <p>(1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.</p> <p>(2) If the good is not knit to shape and does not consist of two or more component parts, a change to heading 6212 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 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.</p> <p>(3) If the good is knit to shape, a change to heading 6212 from any other heading, provided that the knit to shape components are knit in a single country, territory, or insular possession.</p>
*	* * * * *

**PART 134—COUNTRY OF ORIGIN MARKING**

22. The authority citation for part 134 continues 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 (HTSUS)), 1304, 1624.

23. Section 134.1 is amended by revising paragraphs (b), (d)(1) and (d)(2) to read as follows:

**§ 134.1 Definitions.**

\* \* \* \* \*

(b) *Country of origin.* “Country of origin” means the country of manufacture, production, or growth of any article of foreign origin entering the United States as determined under §§ 102.1 through 102.21 of this chapter.

\* \* \* \* \*

(d) \* \* \*

(1) If an imported article will be further processed in the United States, the processor will be the “ultimate purchaser” if the country of origin of the processed good is determined to be the United States under §§ 102.1 through 102.21 of this chapter.

(2) If the country of origin of the processed good is not determined to be the United States under §§ 102.1 through 102.21 of this chapter, the consumer or user of the article, who obtains the article after the processing, will be regarded as the “ultimate purchaser.”

\* \* \* \* \*

24. Section 134.35 is revised to read as follows:

**§ 134.35 Articles effecting a change in country of origin.**

If an imported article will be used in further processing in the United States, the processor will be considered the ultimate purchaser if the processed good is determined to be a good of the United States under §§ 102.1 through 102.21 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) of this part, provided the outermost container in which it is imported will reasonably indicate the country of origin of the article to the ultimate purchaser.

**PART 177—ADMINISTRATIVE RULINGS**

25. The authority citation for part 177 continues 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.

26. Section 177.22 is amended by revising paragraph (a) to read as follows:

**§ 177.22 Definitions.**

(a) *Country of origin.* (1) For purposes of this subpart, an article is a product of a country or instrumentality only if:

(i) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(ii) 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.

(2) The term “instrumentality” will 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, the expression “wholly the growth, product, or manufacture” refers to articles wholly obtained or produced within the meaning of § 102.1(g) of this chapter, and a substantial transformation into a “new and different article of commerce” occurs when the country of origin of an article which is produced in a country or instrumentality from foreign materials is determined to be that

country or instrumentality under §§ 102.1 through 102.21 of this chapter.

\* \* \* \* \*

**W. Ralph Basham,**

*Commissioner, U.S. Customs and Border Protection.*

Approved: July 21, 2008.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. E8–17025 Filed 7–24–08; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

[DoD–2008–HA–0029; 0720–AB22]

**Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals**

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** Section 703 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA–08) states with respect to any prescription filled on or after the date of enactment of the NDAA, the TRICARE retail pharmacy program (TRRx) shall be treated as an element of the DoD for purposes of procurement of drugs by Federal agencies under section 8126 of title 38, United States Code (U.S.C.), to the extent necessary to ensure pharmaceuticals paid for by the DoD that are provided by network retail pharmacies under the program to eligible covered beneficiaries are subject to the pricing standards in such section 8126. NDAA–08 was enacted on January 28, 2008. The statute requires implementing regulations. This