

Communications Privacy Act (ECPA), and the U.S. SAFE WEB Act ("SAFE WEB"). This procedure is intended to make the process for seeking such orders more administratively efficient.

**DATES:** This final rule is effective September 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Alex Tang, *atang@ftc.gov*, 202-326-2447; or W. Ashley Gum, *wgum@ftc.gov*, 202-326-3006; Federal Trade Commission, Office of the General Counsel, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** The RFPA and the ECPA require the FTC, in certain cases, to notify customers when seeking their records from financial institutions or service providers subject to those statutes in the Commission's law enforcement investigations and proceedings. See 12 U.S.C. 3405 (RFPA); 18 U.S.C. 2703(b)(1)(B) (ECPA). These statutes, and SAFE WEB, also authorize the filing of an application seeking an order to delay such notification and to prohibit the recipient of the agency's compulsory process from disclosing that the FTC has requested or received the records, where such notice or disclosure would jeopardize the FTC's investigation. See 12 U.S.C. 3409 (RFPA); 18 U.S.C. 2705 (ECPA); *see also* 15 U.S.C. 57b-2a(b) (SAFE WEB). In cases where these statutes do not require customer notification, SAFE WEB separately authorizes the FTC to seek an order prohibiting the recipient of FTC compulsory process from disclosing the existence of such process to any person. See 15 U.S.C. 57b-2a(c).

Under this final rule, delegating the Commission's authority pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, either an individual Commissioner or the General Counsel may authorize the staff to file actions seeking delay of notification and prohibition of disclosure under the statutes cited above. This delegation will facilitate the Commission's exercise of this authority and, as solely a matter of internal agency administration, is not intended to confer any enforceable right, privilege, or benefit on behalf of any person.

### Procedural Requirements

#### A. Administrative Procedure Act

The FTC has determined that publication of this rule without prior notice and the opportunity for public comment is warranted because this is a rule of agency procedure and practice and therefore is exempt from notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553(b)(A). Because it is a non-

substantive rule, the Commission shall make the rule effective immediately upon publication. See 5 U.S.C. 553(d)(2).

#### B. Regulatory Flexibility Act

Because the Commission has determined that it may issue this rule without public comment, the Commission is also not required to publish any initial or final regulatory flexibility analysis under the Regulatory Flexibility Act as part of such action. See 5 U.S.C. 601(2), 604(a).

#### C. Paperwork Reduction Act of 1995

The final rule is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) because it does not contain any new information collection requirements.

#### List of Subjects in 16 CFR Part 2

Administrative practice and procedure.

For the reasons set forth above, the Federal Trade Commission is amending Subpart A of part 2 of title 16, Code of Federal Regulations, as follows:

#### PART 2—NONADJUDICATIVE PROCEDURES

- 1. The authority citation for part 2 continues to read as follows:

**Authority:** 15 U.S.C. 46, unless otherwise noted.

#### Subpart A—Inquiries; Investigations; Compulsory Processes

- 2. Add § 2.17 to read as follows:

#### § 2.17 Statutory delays of notifications and prohibitions of disclosure.

Upon authorization by the Commissioner who issues compulsory process pursuant to § 2.7(a) or, alternatively, upon authorization by the General Counsel, Commission attorneys may seek to delay notifications or prohibit disclosures pursuant to the Right to Financial Privacy Act (12 U.S.C. 3409), the Electronic Communications Privacy Act (18 U.S.C. 2705), or section 7 of the U.S. SAFE WEB Act (15 U.S.C. 57b-2a).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Part 102

[USCBP-2007-0100; CBP Dec. 11-18]

RIN 1515-AD53 (Formerly RIN 1505-AB49)

### Rules of Origin for Imported Merchandise

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule that portion of a notice of proposed rulemaking, published in the *Federal Register* on July 25, 2008, that proposed amendments to the country of origin rules codified in part 102 of the Customs and Border Protection (CBP) regulations applicable to pipe fittings and flanges, greeting cards, glass optical fiber, rice preparations, and certain textile and apparel products. However, this document is not adopting as a final rule the portion of the notice that proposed amendments to the CBP regulations to establish uniform rules governing CBP determinations of the country of origin of imported merchandise. CBP is not adopting the uniform rules of origin proposal so as to permit further consideration of relevant issues involved in the proposal.

**DATES:** This rule is effective October 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** Monika Brenner, Chief, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 325-0038.

#### SUPPLEMENTARY INFORMATION:

##### Background

##### Discussion of Proposals

On July 25, 2008, Customs and Border Protection (CBP) published in the *Federal Register* (73 FR 43385) a notice of proposed rulemaking (NPRM) that proposed amendments to the CBP regulations relating to the application of the country of origin rules codified in part 102 of the CBP regulations (19 CFR part 102).

##### Uniform Rules of Origin

The notice of proposed rulemaking, in part, proposed amendments to the CBP regulations to extend application of the rules of origin codified in part 102 to all country of origin determinations made

under the customs and related laws and the navigation laws of the United States, unless otherwise specified. CBP stated in the NPRM that it believed that the proposed extension of the part 102 country of origin rules to all trade would result in determinations that are more objective, transparent, and predictable, and would facilitate the exercise of reasonable care by U.S. importers with respect to their obligations regarding the identification of the proper country of origin of imported merchandise. Please refer to the July 25, 2008 (73 FR 43385), document for a more detailed discussion of this proposal. As stated later in this document, CBP is not proceeding with this proposal.

#### *Changes to Specific Rules of Origin*

The July 25, 2008, document also proposed amendments to the country of origin rules codified in part 102 in regard to five specific product areas: Pipe fittings and flanges, greeting cards, glass optical fiber, rice preparations, and certain textile and apparel products. A brief discussion of the proposed changes for these five product areas is set forth below. For a more detailed discussion of these proposed changes, please see the July 25, 2008, NPRM.

#### 1. Pipe Fittings and Flanges

CBP proposed to amend the tariff shift rule in § 102.20(n), CBP regulations (19 CFR 102.20), for goods classified in headings 7301 through 7307, Harmonized Tariff Schedule of the United States (HTSUS), to provide 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 beveling, bore threading, center or step boring, face machining, heat treating, re-coining or resizing, taper boring, machining ends or surfaces other than a gasket face, drilling bolt holes, and burring or shot blasting. CBP stated in the NPRM that the proposed change is consistent with the decision in *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499, C.D. 4026, 313 F. Supp. 951 (1970), *appeal dismissed*, 57 CCP 141 (1970), and that the change was being proposed following further consideration of the judicial guidance in *Boltex Manufacturing Co. v. United States*, 24 CIT 972, 140 F. Supp. 2d 1339 (2000), and comments received in response to a proposed modification/revocation of rulings published in the *Customs Bulletin and Decisions* on November 21, 2001 (35 Cust. B. & Dec. 35 (2001)).

#### 2. Greeting Cards

CBP proposed to amend the tariff shift rule in § 102.20(j) for goods classified in headings 4901 through 4911, HTSUS, which includes printed greeting cards, by creating 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. CBP explained in the July 25, 2008, NPRM that the effect of this proposed change 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. CBP further stated that this proposed change is consistent with CBP practice in applying the substantial transformation standard to printed materials, as reflected in CBP's administrative rulings.

#### 3. Glass Optical Fiber

CBP proposed to amend the tariff shift rule in § 102.20(q) for subheading 9001.10, HTSUS, which encompasses optical fibers and optical fiber bundles and cables, by providing for a change to subheading 9001.10 from any other subheading, except from subheading 8544.70, HTSUS, or glass preforms of heading 7002, HTSUS. CBP stated in the NPRM that this proposed change would conform the tariff shift rule to the determination in CBP Headquarters Ruling Letter (HRL) 560660 dated April 9, 1999, that no substantial transformation (and thus no change in origin) results for purposes of the country of marking statute (19 U.S.C. 1304) from the drawing of a glass preform into optical fiber.

#### 4. Rice Preparations

CBP proposed to amend the tariff shift rule in § 102.20(d) for subheading 1904.90, HTSUS, which encompasses certain rice preparations, by providing for a change to subheading 1904.90 from any other heading, except from heading 1006, HTSUS, or wild rice of subheading 1008.90, HTSUS. CBP explained in the NPRM that this proposed change would eliminate the inconsistency between the tariff shift rule and HRL 967925 dated February 28, 2006, in which CBP held that no substantial transformation results for purposes of the country of origin marking statute when rice is processed with 2% water, 0.4% sunflower oil, 0.2% salt, and 0.4% soy lecithin, placed into cups and sealed, and thermally processed.

#### 5. Certain Textile and Apparel Products

In regard to the rules of origin for textile and apparel products set forth in

§ 102.21, CBP regulations (19 CFR 102.21), CBP proposed two amendments to § 102.21 to properly align the rules with the language of the underlying statute, 19 U.S.C. 3592. First, CBP proposed to amend § 102.21(c)(3)(ii) by adding the words "fabrics of chapter 59 and" so that the amended text would read "Except for fabrics of chapter 59 and goods of heading \* \* \*" As explained in the NPRM, this change would have the effect of ensuring that fabrics of chapter 59, HTSUS, derive their country of origin from where the fabric is formed, consistent with 19 U.S.C. 3592(b)(1)(C).

CBP also proposed to amend the tariff shift rule in § 102.21(e) for goods classified in headings 6210 through 6212, HTSUS, by creating a separate rule for heading 6212, which encompasses "brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted." CBP noted in the NPRM that the existing tariff shift rule for headings 6210 through 6212 does not provide for the possibility of knit-to-shape goods, even though the body-supporting garments of heading 6212 may be knit to shape. CBP stated that this proposed change would ensure that a knit-to-shape good of heading 6212 is found to derive its origin from where the good is knit to shape in accordance with 19 U.S.C. 3592(b)(2)(A)(ii).

#### Comment Period

The July 25, 2008, NPRM provided for a sixty-day period (until September 23, 2008) for the submission of public comments on the proposed regulatory changes. The comment period was extended an additional 30 days by a notice published in the **Federal Register** on September 8, 2008 (73 FR 51962). A subsequent notice published in the **Federal Register** on October 30, 2008 (73 FR 64575), re-opened the comment period until December 1, 2008, to afford interested parties an opportunity to provide meaningful comment in light of a final rule document also published on October 30, 2008 (73 FR 64518), which set forth technical corrections to §§ 102.20 and 102.21 to reflect modifications to the HTSUS that became effective in 2007.

#### Discussion of Comments

A total of 70 commenters responded to the solicitation of public comments, 14 of which provided multiple submissions. Forty-two of the commenters expressed opposition to the proposed uniform application of the country of origin rules set forth in part 102, while 16 commenters raised

specific concerns or questions regarding the uniform rules proposal without expressly supporting or opposing the proposal. Nine of the commenters generally expressed support for the proposal, although certain of these commenters recommended specific modifications to those rules.

In regard to the proposed amendments to the part 102 rules of origin relating to the five specific product areas, six comments were received in regard to two of the product areas. Four commenters discussed the proposed change in the rules pertaining to pipe fittings and flanges, while two commenters addressed the proposed change in the rules regarding glass optical fiber.

Set forth below is a discussion of the comments or portions of comments received that addressed the NPRM's comment period, concerns of a general nature regarding the technical corrections to the part 102 tariff shift rules to reflect the 2007 modifications to the HTSUS, and the proposed amendments to the part 102 rules of origin relating to pipe fittings and flanges and glass optical fiber.

It is noted that a number of comments recommended specific changes to the rules of origin in part 102 other than those that had been proposed. Although CBP considers these comments to be outside the scope of the July 25, 2008, NPRM, CBP nevertheless is reviewing these comments and if, as a result of that review, we determine that additional amendments to the part 102 tariff shift rules are warranted, these changes will be incorporated in a future notice of proposed rulemaking.

#### Uniform Rules of Origin

##### *Comment*

Forty-two commenters opposed implementation of the proposal to establish uniform rules governing CBP determinations of the country of origin of imported merchandise.

##### *CBP's Response*

Based on the public comments received in regard to the uniform rules of origin proposal, CBP has determined not to proceed with this proposal. As a result, CBP believes that it is unnecessary to discuss the comments or portions of comments that addressed the proposed amendments relating to the uniform rules of origin proposal.

#### Extension of Comment Period

##### *Comment*

Two commenters requested a 90-day extension of the public comment period beyond the original due date of

September 23, 2008, and two commenters requested an additional 60 days within which to submit comments beyond the extended due date of December 1, 2008.

##### *CBP's Response*

As noted previously, the notice of proposed rulemaking was published on July 25, 2008, with comments due on or before September 23, 2008. The comment period was extended by a notice published in the **Federal Register** on September 8, 2008 (73 FR 51962), to October 23, 2008. Subsequently, a notice published in the **Federal Register** on October 30, 2008 (73 FR 64575), re-opened the comment period and established a new due date of December 1, 2008. CBP believes that the over four-month comment period afforded to interested parties (with the two extensions) provided all parties with sufficient time to submit comments on the proposed rulemaking.

#### 2007 HTSUS Modifications

##### *Comment*

Fifteen commenters maintained that the part 102 tariff shift rules are outdated as they fail to reflect the modifications to the HTSUS that became effective on February 3, 2007 (see Presidential Proclamation 8097, published in the **Federal Register** on January 4, 2007 (72 FR 453)). These commenters indicated that maintaining the part 102 tariff shift rules to assure consistency with the 2007 changes as well as future changes to the HTSUS is necessary to the proper evaluation and possible future implementation of the uniform rules of origin proposal.

One of these commenters noted that the North American Free Trade Agreement (NAFTA) country of origin rules in part 102 are static in that they are the result of tripartite negotiations with other sovereigns. As a result, the commenter stated that CBP is without authority to make changes to any of the rules without obtaining agreement from Canada and Mexico. The commenter suggested that the uniform tariff shift rules should be placed elsewhere in the CBP regulations so as to more easily facilitate future changes to the rules.

##### *CBP's Response*

As previously noted, a final rule document published in the **Federal Register** on October 30, 2008 (73 FR 64518), set forth technical corrections to the part 102 tariff-shift rules to reflect modifications to the HTSUS that became effective on February 3, 2007. The comment period with respect to the July 25, 2008, NPRM was re-opened on

October 30, 2008, specifically to enable interested parties to evaluate the proposed rule in light of the technical corrections made to §§ 102.20 and 102.21 by the above-referenced final rule document. CBP will continue to update the part 102 rules as necessary to assure consistency with future modifications to the HTSUS.

CBP disagrees with the contention by one commenter that the rules set forth in §§ 102.1 through 102.20 (referred to as the "NAFTA Marking Rules") are "static" as no changes may be made without obtaining agreement with Canada and Mexico. The NAFTA Marking Rules set forth in part 102 are used by the United States under Annex 311 of the NAFTA to determine the country of origin of goods imported into the United States from Canada and Mexico. The United States has full authority to amend those rules whenever it deems it necessary to do so. Of course, the United States engages in consultations with the governments of Canada and Mexico on a regular basis to discuss a number of issues arising under the NAFTA, which may include any amendments being made by each member Party to its NAFTA Marking Rules.

##### *Comment*

With respect to the October 30, 2008, technical corrections final rule document, two commenters contended that these updates appear to have been prepared without proper vetting by the trade as they contain numerous errors. A third commenter stated that the technical corrections "do not make logical sense across the board", while two additional commenters criticized the corrections as interjecting a "description-oriented origin determination process, rather than a tariff shift basis." Two of these commenters maintained that the inclusion of "description-shifts" or the need to subjectively characterize devices within a subheading negates any supposed objective advantage regarding tariff-shift rules and is contrary to the spirit of the original NAFTA agreement regarding origin which was predicated on a clearly-defined shift from one tariff number to another. In addition, it was asserted that using descriptions rather than tariff numbers to determine if a rule has been met hinders or eliminates importers from applying automation to the process, resulting in increased costs to determine if foreign components meet the "description-shift".

*CBP's Response*

CBP acknowledges that the tariff shift rules in § 102.20, as amended by the October 30, 2008, final rule document, contain more descriptions than the prior version but disagrees with the characterization that we are interjecting a description-oriented origin determination process into the tariff-shift system. Our use of certain descriptions is necessitated by the substantial changes in 2007 to portions of the HTSUS, which involved moving a number of goods from various headings or subheadings and concentrating them into one heading or subheading, or vice versa, as well as deleting or adding headings and subheadings. In order to reflect the existing tariff shift rules for the affected goods in their new locations, it was necessary to name or describe goods so that there would be no doubt as to which rule applies to which good.

With regard to the "logical sense" of the corrections, CBP notes that the rules were merely updated to reflect the HTSUS 2007 changes. The update required changes in product coverage and/or numbering of certain headings and subheadings and was not intended to have any other substantive effect.

*Comment*

A commenter contended that the "technical corrections" to §§ 102.20 and 102.21 failed to comply with the requirements of the Administrative Procedure Act (APA) (19 U.S.C. 553) which renders the technical corrections invalid or subject to invalidation by the courts. According to the commenter, CBP should have adhered to the standard notice and comment procedures and delayed effective date requirement of the APA. The commenter stated that none of the exceptions to the APA notice and comment procedures apply in this case as the amendments to the part 102 rules are far more than "technical" amendments to rules previously existing; they are, in many cases, entirely new rules of origin which speak to entirely new tariff subheadings that did not previously exist. The commenter maintained that these are substantive rules which impose obligations on broad classes of persons in that they dictate the country of origin which must be applied to certain classes of imported merchandise.

*CBP's Response*

CBP disagrees with the assertion by one commenter that the October 30, 2008, "technical corrections" final rule document that amended the part 102

tariff shift rules failed to comply with the requirements of the APA because the amendments were far more than "technical" but were substantive in nature. As explained in the final rule document, the 2007 modifications to the HTSUS resulted in certain tariff provisions being added or removed and certain goods being transferred to different or newly-created tariff provisions. Therefore, to properly conform the tariff shift rules in §§ 102.20 and 102.21 to the current version of the HTSUS, it was necessary, depending on each particular HTSUS change, to create an additional rule, remove an existing rule or portion of a rule, or otherwise modify a rule. However, it is important to recognize that these changes to §§ 102.20 and 102.21 were made to ensure that the application of the rules would produce precisely the *same* country of origin result for every good as was the case before the 2007 HTSUS modifications were effected. For this reason, CBP believes that these amendments were not substantive in nature, but indeed qualified as "technical corrections."

The October 30, 2008, "technical corrections" are contrasted with the amendments made by this final rule document to the tariff shift rules in § 102.20 relating to pipe fittings and flanges, greeting cards, glass optical fiber, and rice preparations. The changes promulgated in this final rule are substantive in nature as they are designed to produce *different* country of origin results under the specific circumstances set forth in this document involving those product areas.

Specifically in regard to the APA, CBP stated in the final rule document that, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), it had determined that it would be impracticable and contrary to the public interest to delay publication of the rule in final form pending an opportunity for public comment and that there was good cause for the rule to become effective immediately upon publication. The document included as the reasons for this determination that the technical corrections merely conformed the tariff shift rules to the current HTSUS and that the amendments facilitated trade by ensuring that country of origin determinations made using the regulations were consistent with the HTSUS. In this regard, CBP wishes to emphasize that, prior to the technical corrections made by the October 30, 2008, final rule document, §§ 102.20 and 102.21 failed to provide accurate tariff shift rules for many of the goods affected by the 2007 modifications to

the HTSUS. It was necessary to make these technical corrections at the earliest possible time so that both the public and CBP could properly rely on these rules to accurately determine the country of origin of all goods imported from Canada and Mexico, as required by Annex 311 of the NAFTA, as well as all imported textile and apparel goods. Thus, CBP believes that it appropriately invoked the exceptions described above to the notice, comment, and delayed effective date requirements of the APA.

It is noted that CBP published in the **Federal Register** on July 24, 2003 (68 FR 43630), a similar final rule document that set forth technical corrections to § 102.20 to reflect modifications to the HTSUS that were effective in 2002. CBP determined in that document that the notice and public procedure requirements were inapplicable for the same reasons cited in the October 30, 2008, final rulemaking.

**Pipe Fittings and Flanges***Comment*

Three commenters expressed support for the proposed tariff shift change for pipe fittings and flanges of heading 7307, HTSUS, set forth in the July 25, 2008, NPRM that would allow a change within heading 7307 from fitting forgings or flange forgings to fittings or flanges made ready for commercial use by certain processing. The commenters stated that the proposed change, which is consistent with the result in *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499 (1970), would provide stability to the domestic fittings and flanges industry and consistency with longstanding country of origin marking practices, and in addition would encourage further investment in this domestic industry.

*CBP's Response*

CBP agrees with the commenters that the tariff shift change for pipe fittings and flanges of heading 7307, as proposed in the July 25, 2008, NPRM, is consistent with the court's holding in *Midwood*. We believe that performing the operations set forth in the revised rule results in a fundamental change in the nature of the product. Thus, the country of origin of pipe fittings and flanges of heading 7307 is the country where the referenced operations are performed.

*Comment*

One commenter disagreed with the proposed change in the tariff shift rule for pipe fittings and flanges, arguing that the change would permit U.S. finishers of imported fittings and flanges to

escape their responsibility to mark the finished product with its foreign origin, thus depriving end users of the ability to make an informed choice between U.S.-manufactured fittings and flanges and foreign articles that are merely subjected to finishing operations in the U.S. According to this commenter, the proposed change would benefit U.S. finishers that purchase inexpensive foreign fittings and flanges in an unfinished form, perform minor, largely superficial processing on the articles, and sell them to U.S. consumers at prices that undercut those for fittings and flanges produced entirely in the United States. The commenter recognized that the proposed change would actually only effect a change for imports of fitting and flange forgings from Mexico and Canada since imports of such forgings from all other countries are currently subject to CBP rulings reflecting the decision in *Midwood*.

This commenter contended that the proposed change is contrary to the country of marking statute (19 U.S.C. 1304) as paragraph (c) of the statute prohibits the establishment of marking exemptions for certain imported pipes and fittings. In addition, the commenter stated that, if CBP truly wishes to codify the substantial transformation standard from *Midwood*, it must revise its proposed rule for heading 7307 to encompass the more complex processing steps that formed the basis for that decision. This would involve requiring that the forging be subjected to at least one of the following processes: (1) Heat-treating; or (2) recoining or resizing, and at least one of the following processes: (1) Beveling, machining the gasket face, or machining ends or surfaces other than a gasket face; (2) threading of the bore; or (3) center boring, step boring, taper boring, or drilling bolt holes. In the commenter's opinion, either (or both) (1) heat-treating or (2) recoining or resizing are necessary because these processes can affect the physical character of the imported forging.

#### *CBP's Response*

CBP disagrees with the commenter. As stated previously, the tariff shift rule is being revised to follow the holding of the court in *Midwood*. In *Midwood*, the court considered various processes that would change the country of origin of the imported fittings and flanges involved in that case. In one instance, for example, the court considered imported flange forgings, where excess material was removed from the rim, the forging was faced, bored, threaded or beveled, and drilled and spotfaced. In another instance, the forging was heated

and one end was reduced in size and diameter by compression. The commenter contends that either (1) heat treating or (2) recoining or resizing is necessary, along with one other machining process. Regarding the second example above, a specific machining process was not required by the court to effect an origin change. Therefore, while we acknowledge that the other processing steps mentioned by the commenter may be sufficiently complex and significant to result in a change in the country of origin of forgings, we do not believe that they are the only processing steps that would result in a change in the country of origin of these products. CBP believes that the processing operations cited in the proposed rule are also significant enough to result in a change in the country of origin of the forgings and fairly represent the *Midwood* case.

Further, the revised tariff shift rule will not change the statutory requirement set forth in 19 U.S.C. 1304(c) that imported pipes and pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron must be marked with the English name of the country of origin by means of die stamping, cast-in mold lettering, etching, engraving, or continuous paint stenciling. The revised rule also will not affect the statutory prohibition in section 1304(c) against applying any of the marking exceptions set forth in 1304(a)(3) to the above-described pipes and pipe fittings. The described pipes and pipe fittings will continue to be subject to the special country of origin marking requirements of 19 U.S.C. 1304(c).

#### **Glass Optical Fiber**

##### *Comment*

A commenter concurred with the proposed change to the part 102 tariff shift rule for glass optical fiber, as set forth in the July 25, 2008, NPRM. However, the commenter suggested that the reference in the proposed rule to "glass preforms of heading 7002" should be changed to "glass preforms of chapter 70" to take into account any possible change in the classification of glass preforms in the future. The commenter noted in this regard that CBP's decision to classify the preforms in heading 7002 may be contested in court. Thus, the commenter explained that this suggested modification is made solely in the interest of administrative economy and prudence.

Another commenter urged that CBP deny the requested modification to the rule for optical fiber described above for the reason that there is well-established

precedent for the classification of fiber preforms in heading 7002. In the view of this commenter, the suggested change to "glass preforms of chapter 70" is unusually broad and inconsistent with CBP's goal of increasing certainty and objectivity for all parties. The commenter stated that tariff shift rules should be crafted using the most precise tariff classifications available as reflected in CBP's own existing classification determinations.

##### *CBP's Response*

While it is always conceivable that the tariff classification of an article may change for a variety of reasons, including decisions of the courts or CBP, the second commenter above is correct that the text of each tariff shift rule is crafted using the most precise classification available. If it becomes necessary to make a change to the rules as a result of a classification change, this would be done by means of a new rulemaking document.

#### **Conclusions**

After analysis of the comments and further consideration, CBP has determined to proceed as follows:

##### *Uniform Rules of Origin Proposal*

The portion of the notice of proposed rulemaking published on July 25, 2008, that proposed amendments to establish uniform rules governing CBP determinations of the country of origin of imported merchandise is withdrawn.

##### *Proposed Specific Changes to Rules of Origin*

The portion of the notice of proposed rulemaking that proposed amendments to the country of origin rules codified in part 102 that apply to pipe fittings and flanges, greeting cards, glass optical fiber, rice preparations, and certain textile and apparel products is adopted as a final rule without change.

##### *Additional Specific Changes to Rules of Origin Recommended During Comment Period*

Although CBP considers comments received in response to the NPRM that suggested additional specific changes to the rules of origin codified in 19 CFR part 102 to be outside the scope of the NPRM, CBP is reviewing these comments. If, as a result of that review, it is determined that additional amendments to the part 102 rules are warranted, these changes will be incorporated in a future notice of proposed rulemaking.

**Executive Order 12866**

The amendments set forth in this document do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866 because they will not result in the expenditure of over \$100 million in any one year. The Office of Management and Budget (OMB) has not reviewed this rule under that Order.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments in this document will not have a significant economic impact on a substantial number of small entities because the final rule more closely aligns the country of origin rules codified in 19 CFR part 102 relating to five specific product areas with CBP administrative rulings, judicial decisions, or the underlying applicable statute. Accordingly, the amendments set forth in this document are not subject to the regulatory analysis

requirements or other requirements of 5 U.S.C. 603 and 604.

**Signing Authority**

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

**List of Subjects in 19 CFR Part 102**

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

**Amendments to the CBP Regulations**

Accordingly, for the reasons stated above, part 102 of the CBP regulations (19 CFR part 102) is amended as set forth below.

**PART 102—RULES OF ORIGIN**

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

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

- 2. In the table in § 102.20:
- 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: <ul style="list-style-type: none"> <li>(a) At least one of the following processes:                             <ul style="list-style-type: none"> <li>(1) Beveling;</li> <li>(2) Threading of the bore;</li> <li>(3) Center or step boring; and</li> </ul> </li> <li>(b) At least two of the following processes:                             <ul style="list-style-type: none"> <li>(1) Heat treating;</li> <li>(2) Reconditioning or resizing;</li> <li>(3) Taper boring;</li> <li>(4) Machining ends or surfaces other than a gasket face;</li> <li>(5) Drilling bolt holes; or</li> <li>(6) Burring or shot blasting.</li> </ul> </li> </ul>
*	*
(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 performs of heading 7002.
*	*

■ 3. 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. (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.
6212 .....	(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.
* * * * *	

**Alan D. Bersin,**  
*Commissioner, U.S. Customs and Border Protection.*

Approved: August 30, 2011.

**Timothy E. Skud,**  
*Deputy Assistant Secretary of the Treasury.*  
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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**19 CFR Part 351**

[Docket No. 0612243022–1484–02]

RIN 0625–AA66

**Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Supplemental interim final rule and request for comments.

**SUMMARY:** The Department of Commerce (“the Department”) is issuing this interim final rule to supplement an interim final rule published on February

10, 2011 (*Interim Final Rule*), which governs the certification of factual information submitted to the Department by a person or his or her representative during antidumping (“AD”) and countervailing duty (“CVD”) proceedings. This supplemental interim final rule concerns the certifications required of foreign governments.

By this supplemental interim final rule, foreign governments will be allowed to submit certifications in either the format that was in use prior to the effective date of the *Interim Final Rule* or in the format provided in the *Interim Final Rule*. This supplemental interim final rule will remain in effect until such time as a final rule is published. All other aspects of the *Interim Final Rule* remain in effect and fully apply to all parties and their counsel. Companies should continue to use the company certification provided for in the *Interim Final Rule*. Representatives of companies or governments should continue to use the representative certification provided for in the *Interim Final Rule*. The Department is also requesting comments on the appropriateness of requiring foreign governments to submit the certification provided for in the *Interim Final Rule*, as discussed in more detail

below. The Department is not soliciting comments with respect to any other issues concerning the *Interim Final Rule* as the deadline for such comments has expired.

**DATES: Effective date:** The effective date of this supplemental interim final rule is September 2, 2011.

**Applicability date:** This supplemental interim final rule will apply to all investigations initiated on the basis of petitions filed on or after September 2, 2011, and other segments of AD/CVD proceedings initiated on or after September 2, 2011, as well as all ongoing investigations and ongoing segments of proceedings. Those foreign governments that submitted certifications between March 14, 2011, the effective date of the *Interim Final Rule*, and September 2, 2011 that did not conform with the certification formats required by the *Interim Final Rule* will have 30 days to submit certifications that conform with the formats provided for in this supplemental interim final rule.

**Request for public comment:** The Department is requesting public comment on this supplemental interim final rule. To be assured of consideration, comments must be received no later than October 3, 2011. The Department is not soliciting rebuttal