

# U.S. Customs and Border Protection

## *General Notices*

### **QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES**

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

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning July 1, 2007, the interest rates for overpayments will remain at 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will remain at 8 percent. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

**EFFECTIVE DATE:** July 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the

Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2007–39, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2007, and ending September 30, 2007. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the calendar quarter beginning October 1, 2007, and ending December 31, 2007.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Under-payments (percent)</i>	<i>Over-payments (percent)</i>	<i>Corporate Overpayments (Eff. 1–1–99) (percent)</i>
070174	063075	6%	6%	
070175	013176	9%	9%	
020176	013178	7%	7%	
020178	013180	6%	6%	
020180	013182	12%	12%	
020182	123182	20%	20%	
010183	063083	16%	16%	
070183	123184	11%	11%	
010185	063085	13%	13%	
070185	123185	11%	11%	
010186	063086	10%	10%	
070186	123186	9%	9%	
010187	093087	9%	8%	
100187	123187	10%	9%	
010188	033188	11%	10%	
040188	093088	10%	9%	
100188	033189	11%	10%	
040189	093089	12%	11%	
100189	033191	11%	10%	
040191	123191	10%	9%	
010192	033192	9%	8%	
040192	093092	8%	7%	

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Under- payments (percent)</i>	<i>Over- payments (percent)</i>	<i>Corporate Overpay- ments (Eff. 1-1-99) (percent)</i>
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%
070104	093004	4%	4%	3%
100104	033105	5%	5%	4%
040105	093005	6%	6%	5%
100105	063006	7%	7%	6%
070106	093007	8%	8%	7%

Dated: July 31, 2007

DEBORAH J. SPERO,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, August 6, 2007 (72 FR 843656)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, August 1, 2007*

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

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

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## GENERAL NOTICE

### 19 CFR PART 177

#### **PROPOSED MODIFICATION OF RULING LETTER RELATING TO THE APPLICATION OF THE COASTWISE LAWS TO VESSELS THAT ARE CONNECTED TO MOORED FACILITIES OVER THE OUTER CONTINENTAL SHELF**

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

ACTION: Notice of proposed modification of a headquarters ruling letter relating to the application of the coastwise laws to vessels that are connected to moored facilities over the Outer Continental Shelf.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to modify one ruling letter relating to the application of the coastwise laws to vessels that are connected to moored facilities by gangway or gangplank over the Outer Continental Shelf (OCS). Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 14, 2007.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799

9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark of the Trade and Commercial Regulations Branch at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: L. LaToya Burley, Cargo Security, Carriers, and Immigration Branch, at (202) 572–8793.

SUPPLEMENTARY INFORMATION:

### BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter relating to the application of the coastwise laws to vessels that are connected to moored facilities by gangway or gangplank over the OCS. Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Letter (“HQ”) 114670, dated March 1, 1999 (Attachment A), this notice covers any rulings raising this issue which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) subject to this notice, should advise CBP during this notice period.

In HQ 114607, CBP held, in part, that the placement of a gangway between a dynamically positioned vessel and a facility moored to the OCS would render such vessel an extension of the moored facility and thereby a coastwise point. Based on our review of HQ 114607, CBP now recognizes that a portion of the foregoing holding in HQ 114607 is contrary to the Outer Continental Shelf Lands Act and the CBP decisions interpreting that law.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ 114607 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to correctly reflect CBP's position regarding the placement of gangways between dynamically positioned vessels and moored production facilities pursuant to the analysis set forth in proposed Headquarters Ruling Letter ("HQ") H010211 (Attachment B). Before taking this action, consideration will be given to any written comments timely received.

DATED: August 1, 2007

JEREMY BASKIN,  
*Acting Director,*  
*Border Security and Trade Facilitation Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,

**HQ 114607**  
March 1, 1999  
VES-3/3-15/10-3-RR:IT:EC 114607 GOB  
CATEGORY: Carriers

FRED B. BALDWIN, ESQ.  
*1321 State Street*  
*New Orleans, LA 70118*

RE: Coastwise transportation; Outer Continental Shelf; Towing; 46 U.S.C. App. 289, 883, 316(a); 43 U.S.C. 1333(a)

DEAR MR. BALDWIN:

This is in response to your ruling request of February 9, 1999 submitted on behalf of Saipem Inc. ("Saipem").

**FACTS:**

You describe the pertinent facts as follows.

Saipem plans to use two foreign-flag cargo barges (the "barges") to transport J-lay pipelay equipment ("J-lay equipment" or "equipment") to and from a foreign-flag heavy lift/pipelaying semisubmersible ("S-7000" or "pipelaying vessel"). The S-7000 is a multipurpose vessel used for heavy lift and pipelaying. The equipment will be placed upon the barges in Rotterdam. The

barges will be towed directly to a location on the Gulf Coast of the U.S., where the equipment will be stored on board the barges. When the equipment is needed on board the S-7000, the barges will be towed offshore to rendezvous with the S-7000. The pipelaying equipment will be transferred from the barges to the S-7000 using the cranes onboard the S-7000. The rendezvous site will be located beyond three miles from the U.S. shoreline, but within the waters of the U.S. that come within the provisions of the Outer Continental Shelf Lands Act. The S-7000 will be held in place using dynamic positioning during the transfer and the two barges will be moored directly to the S-7000 during the transfer activity. Neither the S-7000 nor the barges will be attached to the seabed.

While the pipelaying activity is occurring, the barges will be towed to a location on the U.S. Gulf Coast and stored until the equipment is ready to be offloaded from the S-7000. Upon completion of the pipelaying activity, the barges will be towed to a site beyond three miles from the U.S. shoreline, but within the waters which come within the provisions of the Outer Continental Shelf Lands Act. The towing of the barges may be accomplished by non-coastwise-qualified vessels. At that point the equipment will be transferred from the S-7000 to the barges. The S-7000 will be held in place using its dynamic positioning system during the transfer and the two barges will be moored directly to the S-7000. Neither the S-7000 nor the barges will be attached to the seabed while the equipment is being transferred to the barges. In fact, the S-7000 will not be attached to the seabed at any time during the described events, including prior to and subsequent to the transfer of equipment to the S-7000.

While it is planned that no equipment will be removed from or placed aboard the barges while they are stored at the U.S. site, it is possible that some modification or repair of the equipment might be required before the barges are towed to the rendezvous site. This work could involve replacing components that were found to be defective or placing aboard the barges equipment which was not ready for shipment when the barges departed from Rotterdam.

In response to our request for additional information with respect to the towing operation, the following information was provided:

Two towing tugs will be utilized to tow the barges, C-9 and S-42, from the storage site [on the U.S. Gulf Coast] to the site at which they will rendezvous with the S-7000 for transfer of pipelaying equipment from the barges to the S-7000. Each of the barges will be carrying pipelaying equipment owned by Saipem, to be utilized onboard the S-7000.

The tugs used to tow the loaded barges from the storage site to the rendezvous location may or may not be the same tugs used to tow the loaded barges from Europe to the storage site. If the same tugs are utilized for the tow to the rendezvous location, these tugs will remain attached to the loaded barges during the entire transport and storage operation from Europe to the OCS rendezvous location.

For safety reasons, two assist tugs already at the rendezvous site will be used to assist in maneuvering the loaded barges alongside the S-7000 and these tugs will remain connected to the barges during the entire period they remain alongside the S-7000. The towing tugs utilized to tow

the C-9 and S-42 from the storage site to the rendezvous location will be detached and, during the transfer operation, these tugs may or may not remain at the worksite.

The barges, with the assist tugs connected, will remain alongside the S-7000 for approximately three days while the pipelaying equipment is transferred from the barges to the S-7000.

Following the transfer of equipment to the S-7000, the empty barges will be towed to a storage site at a location on the U.S. Gulf Coast. This storage site may or may not be at the same location where the loaded barges were originally stored. The storage period is estimated to be approximately two to three months, during which the pipelaying operations will be performed by the S-7000. Either the original tugs that towed the barges to the rendezvous location, or other tugs, will tow the empty barges from the rendezvous location to the storage site.

After completing the pipelaying operations, the empty barges will be towed from the storage site to the rendezvous location, and the pipelaying equipment will be transferred from the S-7000 back to the barges. The tow of the empty barges will be performed by two tugs that may or may not be U.S. coastwise qualified.

Two assist tugs already at the rendezvous location will be used to assist in maneuvering the empty barges alongside the S-7000 and these tugs will remain connected to the barges during the entire period they remain alongside the S-7000. The towing tugs utilized to tow the C-9 and S-42 from the storage site to the rendezvous location will be detached and, during the transfer operation, these tugs may or may not remain at the worksite.

The barges, with the assist tugs connected, will remain alongside the S-7000 for approximately three days while the pipelaying equipment is transferred from the S-7000 to the barges.

Following the transfer of pipelaying equipment to the barges, the loaded barges will be towed directly to a foreign destination or to a storage site at a location on the U.S. Gulf Coast, where the barges will be temporarily stored prior to transport to a foreign destination. If stored at a U.S. site, the storage period will be dependent on the timing and schedule for the next job in which the pipelaying equipment is needed by the S-7000.

The tugs used to tow the empty barges to the rendezvous site may or may not subsequently be used to tow the loaded barges from the rendezvous site to their next destination, which could be either a foreign destination or a U.S. storage site where the barges will be temporarily stored prior to transport to a foreign destination.

You also state the following alternative scenario with respect to the towing:

An alternative to the above is to utilize the towing tugs to provide additional assistance to hold the barges in place alongside the S-7000 at the rendezvous location. These tugs would be in addition to the two assist tugs, and their use would be to provide additional safety while the barges are alongside the S-7000.



In this scenario, the towing tugs would be attached to the loaded barges at the storage site, remain attached at the rendezvous location and remain attached until the empty barges arrive at the storage site. The towing tugs may or may not be the same tugs used to tow the loaded barges from Rotterdam to the U.S. storage site.

When the pipelaying operations are completed, the towing tugs would be attached to the empty barges at the storage site, remain attached at the rendezvous location and be detached when the loaded barges reach their next destination, which could be either a foreign destination or a U.S. storage site where the barges will be temporarily stored prior to transport to a foreign destination.

**ISSUE:**

The application of the coastwise laws to the above-described activity.

**LAW and ANALYSIS:**

Statutory and Regulatory Framework

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. A vessel that is built in, documented under the laws of, and owned by citizens of the United States, and which obtains a coastwise endorsement from the U.S. Coast Guard, is referred to as “coastwise-qualified.”

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

46 U.S.C. App. 883, the coastwise merchandise statute often called the “Jones Act”, provides in part that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

19 CFR 4.80b(a) provides, in pertinent part:

A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise.

19 U.S.C. 1401(c) defines “merchandise,” in pertinent part, as follows: “goods, wares, and chattels of every description . . .”

The coastwise law applicable to the carriage of passengers is found in 46 U.S.C. App. 289 and provides that:

No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed.

Section 4.50(b), Customs Regulations (19 CFR 4.50(b)) states as follows:

A passenger within the meaning of this part is any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.

46 U.S.C. App. 316(a) prohibits the use of a non-coastwise-qualified vessel to tow any vessel, other than a vessel in distress, between ports or places in the United States embraced within the coastwise laws, either directly or by way of a foreign port, or to do any part of such towing, or to tow any such vessel between points in a harbor of the United States.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a); "OCSLA"), provides in part that the laws of the United States are extended to: "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a state."

Under the foregoing provision, we have ruled that the coastwise laws and other Customs and navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf ("OCS"). We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the outer Continental Shelf for the purpose of resource exploration operations.

#### Application of the Coastwise Laws and Regulations to the Stated Facts

The following constitutes our analysis of the coastwise laws within the context of the stated facts. We will also address certain specific questions which you have asked.

The facts do not appear to implicate 46 U.S.C. App. 289, the coastwise passenger statute. We note that crewmembers are not considered passengers.

In C.S.D. 79-321, we held that the use of a non-coastwise-qualified vessel to lay pipe between points embraced within the coastwise laws of the U.S. was not prohibited by 46 U.S.C. App. 883

Based upon the facts presented, it appears that the J-lay equipment is equipment of the S-7000 or pipelaying vessel because it is equipment which is intended for use on the S-7000 or pipelaying vessel. The J-lay equipment is not equipment of the barges because it is not intended for use on the barges. Accordingly, when transported on the barges, the equipment is merchandise subject to 46 U.S.C. App. 883.

The transportation of the equipment on the barges from Rotterdam to a domestic port is not a movement subject to 46 U.S.C. App. 883 because the transportation commenced at a foreign port, i.e., the equipment was laded on to the barges at a foreign port. We further note that the merchandise is not to be unladed at the domestic point. Thus, in this situation there is neither a lading nor an unlading of merchandise at a coastwise point.

As stated above, the S-7000 will not be attached to the OCS at any time during the described events, including prior to and subsequent to the transfer of equipment to the S-7000. Accordingly, the S-7000 is not a coastwise point within the meaning of the coastwise laws. Therefore, any lading or unlading of merchandise at the S-7000 is not an activity subject to 46 U.S.C. App. 883. Further, in response to your specific question, even if the S-7000 were to be considered a coastwise point, the transportation of the equipment from Rotterdam to the S-7000, by way of a U.S. port where the equipment

was not unladed from the vessel, would not be a coastwise movement (i.e., transportation subject to 46 U.S.C. App. 883) because the merchandise was laded on the vessel at a foreign port.

You ask with respect to the coastwise law ramifications of the lading of late arriving components of the J-lay equipment on the barges while they are in the U.S. port and the subsequent unlading of those components on to the S-7000. Based upon the determination that the S-7000 is not a coastwise point, there is no coastwise prohibition with respect to such transportation.

Assuming that the barges remain stationary when maintenance, modifications, or repairs are performed thereon in the U.S. port, such activity would not constitute coastwise transportation.

Inasmuch as the S-7000 is not a coastwise point (see above), the proposed towing activities described in the "primary scenario" are not violative of 46 U.S.C. App. 316(a). Such towing, where the towing vessels are detached from the barges at the S-7000, is permissible under the coastwise laws because it constitutes tows from a coastwise point to a non-coastwise point, and vice versa. Accordingly, such towing may be accomplished by a non-coastwise-qualified vessel.

With respect to your alternative scenario where the towing vessels remain attached to the barges throughout the transfer operation, the proposed towing would not be violative of 46 U.S.C. App. 316(a) if the barges return to the same storage site on the U.S. Gulf Coast from which they departed. However, under the alternative scenario where the barges are returned to a different storage site on the U.S. Gulf Coast, and where the barges remain attached to the towing vessels throughout the operation, such activity would be violative of 46 U.S.C. App. 316(a) because it would constitute a tow from one U.S. point (the storage site on the U.S. Gulf Coast) to a second U.S. point (a different storage site on the U.S. Gulf Coast).

You also ask whether the placement of a gangway between the S-7000 and a facility moored to the OCS while the equipment is being transferred would cause the S-7000 to become a coastwise point. Our answer to this question is yes. We would view the S-7000 as an extension of the moored facility which is a coastwise point such that the S-7000 would be a coastwise point.

**HOLDING:**

The coastwise laws, 46 U.S.C. App. 289, 883, and 316(a), apply as described above with respect to the activities described above.

JERRY LADERBERG,  
*Chief,*  
*Entry Procedures and Carriers Branch.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,

HQ H010211  
VES-3-15 OT:RR:BSTC:CCI H010211 LLB  
Category: Carriers

FRED BALDWIN, ESQUIRE  
*1321 State Street*  
*New Orleans, Louisiana 70118*

RE: Coastwise transportation; Outer Continental Shelf; gangway; modification of HQ 114607 (Mar. 1, 1999)

DEAR MR. BALDWIN:

On March 1, 1999, U.S. Customs and Border Protection ("CBP") issued Headquarters Ruling ("HQ") 114607 to you, on behalf of Saipem, Inc. In HQ 114607, CBP held, in part, that the placement of a gangway between a dynamically positioned vessel and a facility moored to the Outer Continental Shelf (OCS) would render such vessel an extension of the moored facility and thereby a coastwise point. We have recently recognized that the foregoing holding in HQ 114607 is contrary to CBP decisions which interpret the Outer Continental Shelf Lands Act. Consequently, this ruling, HQ H010211, modifies HQ 114607, in part, and provides a decision consistent with current CBP decisions. Because the remainder of HQ 114607 is correct, we do not address it here.

FACTS

The pertinent facts in HQ 114607 provide as follows. Saipem informed this office that it planned to use two foreign-flag cargo barges (the "barges") to transport J-lay pipelay equipment ("J-lay equipment" or "equipment") to and from a foreign-flag heavy lift/pipelaying semisubmersible ("S-7000" or "pipelaying vessel"). The S-7000 is a multipurpose vessel used for heavy lift and pipelaying. The equipment was to be placed upon the barges in Rotterdam and towed directly to a location on the Gulf Coast of the U.S., where the equipment will be stored on board the barges. When the equipment was needed on board the S-7000, the barges were to be towed offshore to rendezvous with the S-7000. The pipelaying equipment was to be transferred from the barges to the S-7000 using the cranes onboard the S-7000. The rendezvous site was to be located beyond three miles from the U.S. shoreline, but within the waters of the U.S. that come within the provisions of the Outer Continental Shelf Lands Act. The S-7000 was to be held in place using dynamic positioning during the transfer and the two barges were to be moored directly to the S-7000 during the transfer activity. Neither the S-7000 nor the barges were to be attached to the seabed.

During the pipelaying activity is occurring, the barges were to be towed to a location on the U.S. Gulf Coast and stored until the equipment is ready to be offloaded from the S-7000. Upon completion of the pipelaying activity, the barges were to be towed to a site beyond three miles from the U.S. shoreline, but within the waters so as to come within the provisions of the Outer Continental Shelf Lands Act. Saipem proposed possibly using non-coastwise-qualified vessels to tow the barges and in such case the equipment was to be transferred from the S-7000 to the barges. The S-7000 was to be held in

place using its dynamic positioning system during the transfer and the two barges were to be moored directly to the S-7000. Neither the S-7000 nor the barges were to be attached to the seabed while the equipment was being transferred to the barges. In fact, Saipem stated that the S-7000 was not being attached to the seabed at any time during the described events, including prior to and subsequent to the transfer of equipment to the S-7000.

Under the foregoing scenario, CBP held in HQ 114670, in part, that the S-7000 was not a coastwise point insofar as it was not attached to the seabed. However, when Saipem presented an alternative scenario which included connecting the SF-7000 by gangplank to facility moored to the OCS, CBP held that the SF-7000 would be considered a coastwise point insofar as it would be an extension of the moored facility. As explained in the “Law and Analysis” section of this ruling, the latter holding is inapposite to the OCSLA and the CBP decisions interpreting that law.

#### ISSUE

Whether a dynamically positioned vessel, which is not attached to the OCS, is deemed an extension of a moored facility that is a coastwise point pursuant to the OCSLA, merely by virtue of connection to such moored facility by gangway.

#### LAW AND ANALYSIS

Pursuant to 46 U.S.C. § 55102(b), the merchandise coastwise law often called the “Jones Act”, no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified, i.e. U.S.-built, owned and documented. Likewise, 46 U.S.C. § 55103(a) prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel.

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ. See 33 C.F.R. § 2.22(a)(2). In addition, Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>1</sup> provides, in part, that the laws of the United States are extended to:

... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

(emphasis added).

The subject of this revocation is whether the S-7000 is a coastwise point when using dynamic positioning; however, connected by gangway to a moored facility. As stated above, the OCSLA, extends the laws of the U.S. to “all artificial islands and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the

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<sup>1</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

purpose of exploring for, developing, or producing resources therefrom.” The statute was substantively amended by the Act of September 18, 1978,<sup>2</sup> adding, inter alia, language concerning temporary attachment to the seabed. The legislative history provides, in pertinent part:

. . . It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are *connected* to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes.

(emphasis added). H. Rep. No. 95–590; 1978 U.S.C.C.A.N. 1450, 1534.

Pursuant to the foregoing provision, we have ruled that the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. See Treasury Decisions (T.D.s) 54281(1), 71–179(1), 78–225; see also, Cust. Serv. Dec. 85–54. We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. See Cust. Serv. Dec. 81–214 and 83–52; see also, HQ 107579 (May 9, 1985).

In HQ 114607, Saipem indicates that S–7000 would be dynamically positioned next to a moored production facility and connected thereto by gangway. We note that with respect to dynamically positioned vessels, this agency has long-held that the lack of any permanent or temporary attachment to the seabed operates to exclude such vessels operating over the OCS from becoming coastwise points pursuant to the OCSLA. HQ 109576 (July 12, 1988) and HQ 113838 (Feb. 25, 1997). Consequently, unless the S–7000 itself is connected to the seabed, as required by the OCSLA, it will not be considered a coastwise point merely by virtue of its connection to a moored production facility by gangway. See HQ H008396 (June 4, 2007) (holding that a foreign-flag floatel was not a coastwise point by virtue of its connection to a moored floating production facility by gangplank unless it also attaches to the seabed.); HQ 115431 (Sept. 4, 2001)(stating that hotel vessel would not be considered a coastwise point pursuant to the OCSLA unless anchored or moored to the seabed); see also HQ 115134 (Sept. 27, 2000)(stating that floating offshore service facility vessel would not be subject to Customs and navigation laws pursuant to the OCSLA insofar as “onboard vessel propulsion system,” rather than anchoring was used to maintain the vessel’s position next to drilling unit).

#### HOLDING

A dynamically positioned vessel, which is not attached to the OCS, is not deemed an extension of a moored facility that is a coastwise point pursuant

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<sup>2</sup> Pub. L. 95–372, Title II, § 203, 92 Stat. 635.

to the OCSLA, merely by virtue of connection to such moored facility by gangway.

**EFFECT ON OTHER RULINGS**

HQ 114607, dated March 1, 1999, is hereby modified.

JEREMY BASKIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

**GENERAL NOTICE**

**19 C.F.R. PART 177**

**PROPOSED REVOCATION OF RULING LETTERS  
RELATING TO THE COUNTRY OF ORIGIN OF CERTAIN  
REMANUFACTURED PHOTORECEPTOR CARTRIDGES**

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

**ACTION:** Notice of proposed revocation of two country of origin marking ruling letters and revocation of treatment relating to the country of origin marking requirements for certain remanufactured photoreceptor cartridges.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (“CBP”) intends to revoke two ruling letters relating to the country of origin marking requirements for certain remanufactured photoreceptor cartridges. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before September 14, 2007.

**ADDRESS:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Holly Files, Valuation and Special Programs Branch: (202) 572-8817.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the country of origin marking requirements for certain remanufactured photoreceptor cartridges. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (“HQ”) 560768, dated May 26, 1998, (Attachment A), and the revocation of HQ 561412, dated January 31, 2000, (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. No further rulings requiring changes have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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



agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 560768, CBP held that the country of origin of remanufactured cartridges was the country of origin of the used cartridges, the single material that imparted the essential character to the good. This determination was based upon CBP's finding that for purposes of determining whether there was a change in tariff classification pursuant to the applicable rule under 19 C.F.R. § 102.20, the single "foreign material" incorporated into the remanufactured cartridges was the used cartridges imported into Canada. In finding that direct physical identification of the origin of the commingled cartridges may not be practical, CBP found that the country of origin of the remanufactured cartridges could be determined on the basis of an inventory management method provided under the appendix to 19 C.F.R. Part 181.

Subsequent to the issuance of HQ 560768, the importer of the remanufactured cartridge requested that CBP reconsider the ruling based upon information that the origin of the used cartridges could not be determined through physical inspection of the used cartridges and that it did not have reliable sources from which it could determine the origin. Upon review of this additional information, CBP issued HQ 561412. In HQ 561412, CBP held that for purposes of determining whether there was a change in tariff classification pursuant to the applicable rule under 19 C.F.R. § 102.20, the "foreign material" incorporated into the remanufactured cartridge was the used cartridge imported into Canada, and not its component parts resulting from disassembly of the used cartridge. Pursuant to 19 C.F.R. § 102.11(d)(3), CBP also held that the country of origin of the refurbished cartridge was Canada, the last country in which the good underwent production prior to entering the United States.

Upon review of the aforementioned rulings, we have determined that the country of origin determination in HQ 560768 is incorrect. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 560768 to reflect the proper country of origin designation according to the analysis contained in proposed HQ H012926, set forth as Attachment C, namely that for purposes of determining whether there is a change in tariff classification pursuant to the applicable rule under 19 C.F.R. § 102.20, the "foreign materials" incorporated into a remanufactured cartridge include not only the used cartridge, but also the new parts imported into Canada. Inasmuch as HQ 561412 is a reconsideration of HQ 560768 and CBP intends to revoke HQ 560768, CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQ 561412 as set forth in Attachment C. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

**DATED:** July 27, 2007

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

Attachments

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[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,

HQ 560768  
May 26, 1998  
MAR-2-05 RR:CR:SM 560768 MLR  
CATEGORY: Marking

JOHN M. PETERSON, ESQ.  
NEVILLE, PETERSON & WILLIAMS  
80 Broad Street, 34th Floor  
New York, NY 10004

RE: Country of origin marking for photoreceptor toner cartridges; disassembly; cleaning; reassembly; Canada; NAFTA; Article 509

DEAR MR. PETERSON:

This is in reference to your letter of November 21, 1997, requesting a ruling on behalf of your client, Xerox Corporation, concerning the country of origin marking of certain photoreceptor toner cartridges (hereinafter "cartridges"), imported from Canada. A sample of a cartridge was submitted with your request.

FACTS:

It is stated that cartridges, classifiable under subheading 8473.30.30, Harmonized Tariff Schedule of the United States (HTSUS), for use with automatic data processing (ADP) laser printers will be imported into the U.S. from Canada. As imported from Canada, it is stated that the cartridges will include a photoreceptor belt or cylinder, toner receptacle unit, toner developing unit, charge/discharge unit, and cleaning unit. A photoreceptor is stated to be the surface on which an electrostatic charge creates a positive image of the document being printed. The toner chemical is stated to be essential to the creation of the image which is transferred to the paper. The developing unit creates the electrostatic charge on the photoreceptor, and the housing is stated to be specially shaped to fit inside the printer cabinet and to allow the various components of the cartridge to operate.

It is stated that the cartridges will be manufactured in Canada by a Xerox contractor, in part from components salvaged from "spent" or "used" toner cartridges. The used cartridges will be sourced from a variety of countries. It is stated that in Canada the cartridges will undergo an extensive disassembly operation, which will entail the following steps:

1. removal of covers, 2. removal of corona wires, 3. removal of springs, 4. release of springs, 5. removal of plastic pins, 6. separation of developer units from waste hoppers, 7. removal of metal axle from gear housing, 8. removal

of photoreceptor drum, 9. removal of metal wiper blade, 10. vacuum cleaning of waste hopper to remove toner chemicals therefrom, 11. inspection of toner auger (agitator) paddle and white gears, 12. cleaning of wiper blade, 13. inspection of wiper blade, 14. if wiper blade is suitable for reuse, dipping wiper blade in cleaning solution, 15. cleaning of wiper blade removed from solution, 16. inspection of wiper blade, 17. reinstallation of blade on clean waste hopper, 18. inspection of developer housing, 19. vacuum removal of toner chemicals from housing, 20. removal and inspection of magnetic roller, and 21. adjustment of tolerances and sealing of developer unit.

It is stated that disassembled components which are determined to be damaged or defective will be discarded. Among the components which are likely to be replaced in some cases are toner augers and gears, wiper blades, developer housings, and magnetic rollers. It is also stated that other components, such as corona wires and photoreceptor drums, will be removed and replaced in virtually all cases. It is also stated that no effort will be made to identify the components which impart the essential identity to any of the spent cartridges or to keep those components together during the manufacturing process. After disassembly, it is stated that the salvaged parts will be placed in bins, and new parts will be ordered from inventory. The process of assembly is stated to consist of the following processes:

1. cleaning of mag roller (mag rollers will be replaced in virtually all cases),
2. filling of toner hopper with a new supply of electrostatic toner chemical,
3. checking for leakage in refilled cartridges,
4. affixing traceability label on cartridge,
5. cleaning of corona wire in ultrasonic bath,
6. drying of corona wire and installation in a clean container,
7. installation of new photoreceptor drum (100 percent replacement part),
8. installation of metal axle into cartridge housing,
9. installation of corona wire (many of which will be new replacement parts),
10. application of toner chemical on magnetic roller,
11. assembly of finished developer unit to waste hopper,
12. reinstallation of cartridge cover on housing,
13. testing of cartridge and completion of "traceability card", and
14. sealing and labeling of refurbished cartridges.

Xerox estimates that parts accounting for approximately 15 percent of the value of the spent cartridges will be salvaged and reused, and that the remaining components will be new components and will originate in Canada and several other countries.

#### ISSUE:

Whether the refurbished cartridges may be marked "Made in Canada".

#### LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as:

The country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to an article in an-

other country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of this part; however for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added.)

Section 134.1(j), Customs Regulations {19 CFR 134.1(j)}, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. A “good of a NAFTA country” is defined in 19 CFR 134.1(g) as an article for which the country of origin is Canada, Mexico, or the U.S. as determined under the NAFTA Marking Rules set out at 19 CFR Part 102. Section 102.11, Customs Regulations (19 CFR 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for marking purposes. Paragraph (a) of this section states that the country of origin of a good is the country in which:

(1) The good is wholly obtained or produced; (2) The good is produced exclusively from domestic materials; or (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Based upon the facts in this case, we first apply the rule in 19 CFR 102.11(a)(3). The finished cartridges are stated to be classifiable under sub-heading 8473.30.30, HTSUS, since Additional U.S. Note 2(c) to Chapter 84 includes “laser imaging assemblies . . . incorporating more than one of the following: Photoreceptor belt or cylinder, toner receptacle unit, toner developing unit, charge/discharge unit, cleaning unit.” The applicable change in tariff classification for heading 8473 set out in section 102.20(o), Section XVI, Chapters 84 through 85, provides:

8473 . . . A change to heading 8473 from any other heading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly. It is claimed that several of the components which are assembled into the cartridges are themselves classifiable under heading 8473, as determined in New York Ruling Letter (NYRL) A85693 dated July 18, 1996, NYRL 875263 dated June 16, 1992, and NYRL 872982 dated April 7, 1992. These components include mag rollers, photoreceptor drums, and machine-dedicated plastic cartridge housings. Therefore, it is claimed that to the extent some of the components assembled into the refurbished cartridges are not of Canadian origin, the requisite tariff shift will not be satisfied.

However, the material that is imported into Canada (i.e., the foreign material) is not component parts of cartridges, but complete (albeit used) cartridges. Therefore, the question presented is whether this foreign material undergoes a change in tariff classification or other requirement set out in section 102.20 for the good. In this regard, a comparison between the used cartridges imported into Canada and the refurbished cartridges exported from Canada must be made. Based upon this comparison, it is clear that the requisite tariff shift will not occur. Furthermore, we also note that with regard to the proposed disassembly operations, 19 CFR 102.17 provides that:

A foreign material shall not be considered to have undergone the applicable change in tariff classification set out in section 102.20 . . . or to have met any other applicable requirements of those sections merely by reason of . . . (b) dismantling or disassembly.

Therefore, foreign used cartridges will not undergo the necessary tariff shift even after disassembly and reassembly in Canada, and 19 CFR

102.11(a)(3) will not be applicable for determining the country of origin of the imported cartridges. Accordingly, 19 CFR 102.11(b) of the hierarchical rules must next be applied. This section provides as follows:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a), the country of origin of the good:

(1) Is the country or countries of origin of the single material that imparts the essential character of the good, or

(2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.

When determining the essential character of a good under 19 CFR 102.11, 19 CFR 102.18(b)(1) provides that only domestic and foreign materials that are classified in a tariff provision from which a change is not allowed under the 102.20 specific rule or other requirements applicable to the good shall be taken into consideration. Section 102.18(b)(1)(iii), Customs Regulations (19 CFR 102.18(b)(1)(iii)), provides that if there is only one material that is classified in a tariff provision from which a change in tariff classification is not allowed, then that material will represent the single material that imparts the essential character to the good under 19 CFR 102.11.

Xerox claims that it is impossible to find that any single component of the imported toner cartridges imparts the essential character, and that each cartridge contains several components of roughly coequal importance in the function of the article. The components of equal importance are stated to be the photoreceptor, toner, developing unit, and housing. However, as stated earlier, the foreign material under the facts of this case is the imported complete cartridges, not the components of such cartridges, extracted as a result of the disassembly operation. Thus, there is only one material, the imported cartridge, that does not undergo any change in tariff as a result of the tear down. Accordingly, pursuant to section 102.18(b)(iii), we find that the imported cartridge is the single material that imparts the essential character to the refurbished good.

In this case, based upon the facts presented, it is stated that the used cartridges are sourced from a variety of countries. Next, they are disassembled and reassembled using components not necessarily from the same used cartridge. Therefore, we find that since direct physical identification of the origin of the refurbished cartridges is not practical, pursuant to section 102.11(b)(2), the country of origin of the refurbished cartridges may be determined on the basis of an inventory management method provided under the appendix to 19 CFR Part 181.

It is also claimed that the cartridges may be marked as a product of Canada by virtue of 19 CFR 102.19 since the refurbished cartridges may be considered NAFTA "originating" goods. Based upon the information presented, we disagree. General Note 12, HTSUS, requires a change from any other heading. If the used cartridges imported into Canada are not originating, the refurbished cartridges imported into the U.S. also will not be considered originating goods since both the used cartridges and the refurbished cartridges are classified in heading 8473, HTSUS.

HOLDING:

Based upon the information provided, pursuant to 19 CFR 102.11(b), the country of origin of the refurbished cartridges is the country of origin of the single material that imparts the essential character to the good, which are the used cartridges. However, since direct physical identification of the comingled cartridges may not be practical, the country of origin of the refurbished cartridges may be determined by an inventory management method of the appendix to 19 CFR Part 181.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,

HQ 561412  
January 31, 2000  
MAR-05 RR:CR:SM 561412 BLS  
CATEGORY: Marking

JOHN M. PETERSON, ESQ.  
NEVILLE, PETERSON & WILLIAMS  
80 Broad Street  
New York, New York 10004

RE: Country of origin marking of refurbished photoreceptor cartridges; reconsideration of HRL 560768; 19 CFR 102.11(d)(3)

DEAR MR. PETERSON:

This is in reference to your letter dated June 9, 1999, on behalf of Xerox Corporation ("Xerox"), requesting that Customs reconsider its decision in Headquarters Ruling Letter (HRL) 560768 dated May 26, 1998, concerning the country of origin marking requirements of certain photoreceptor cartridges imported from Canada.

FACTS:

The imported cartridges, which are used with automatic data processing (ADP) laser printers, will be produced in Canada primarily from new parts of Canadian and U.S. origin. However, some of the components used in the manufacture of the cartridges are salvaged from spent toner cartridges. The general process by which parts are salvaged from spent toner cartridges is summarized as follows:

The Canadian manufacturer, MKG Cartridges, Inc., purchases spent toner cartridges from a variety of sources, primarily from brokers who deal in such merchandise. These cartridges were originally manufactured by Hewlett-Packard Company, at various locations throughout the world. The cartridges, when received at the MKG facility, are not in packages, and they

do not indicate any reliable notations of their origin. Some of the spent cartridges received have origin notations on certain components, but MKG is unable to determine whether these reference the origin of the entire cartridge (i.e., the country where the cartridge is assembled), or simply the origin of a component on which the marking appears.

In their condition as received at the MKG facility, the spent cartridges are incapable of functioning for their intended use. MKG completely disassembles the spent cartridges, in an effort to salvage any re-usable components. The photoreceptor drum is discarded in nearly 100% of all cases. Other key components which contribute to the functionality of photoreceptor cartridges such as magnetic rollers, corona wires and cleaner/wiper blades, are discarded in all, or nearly all cases. It is stated that during the tear-down process in Canada, no effort is made to preserve the essential identity of the exported spent cartridges. Rather, any salvageable parts removed from the spent cartridges are brought to a parts inventory, where they are commingled with new parts of the same type.

After the salvage operation has been performed, MKG then begins assembling the imported cartridges in Canada from new and used components. The assembly operations in Canada include not only manufacturing assembly operations, but also quality-control testing, particularly of any parts which have been salvaged from spent cartridges. The specific disassembly and assembly operations are described as follows:

A) Disassembly

1. removal of covers,
2. removal of corona wires,
3. removal of springs,
4. release of springs,
5. removal of plastic pins,
6. separation of developer units from waste hoppers,
7. removal of metal axle from gear housing,
8. removal of photoreceptor drum,
9. removal of metal wiper blade,
10. vacuum cleaning of waste hopper to remove toner chemicals therefrom,
11. inspection of toner auger (agitator) paddle and white gears,
12. cleaning of wiper blade,
13. inspection of wiper blade,
14. if wiper blade is suitable for reuse, dipping wiper blade in cleaning solution,
15. cleaning of wiper blade removed from solution,
16. inspection of wiper blade,
17. reinstallation of blade on clean waste hopper,
18. inspection of developer housing,
19. vacuum removal of toner chemicals from housing,
20. removal and inspection of magnetic roller, and
21. adjustment of tolerances and sealing of developer unit.

B) Assembly

1. cleaning of mag roller (mag rollers will be replaced in virtually all cases),
2. filling of toner hopper with a new supply of electrostatic toner chemical,
3. checking for leakage in refilled cartridges,
4. affixing traceability label on cartridge,
5. cleaning of corona wire in ultrasonic bath,
6. drying of corona wire and installation in a clean container,
7. installation of new photoreceptor drum (100 percent replacement part),
8. installation of metal axle into cartridge housing,
9. installation of corona wire (many of which will be new replacement parts),
10. application of toner chemical on magnetic roller,
11. assembly of finished developer unit to waste hopper,
12. reinstallation of cartridge cover on housing,
13. testing of cartridge and completion of traceability card, and
14. sealing and labeling of refurbished cartridges.

After the cartridges have been assembled, they are tested and packed for shipment to the United States.

Xerox states that about 15% of the cost of the imported cartridges is represented by parts salvaged from old cartridges. It is further stated that the

salvaged parts consist primarily of plastic housing components, which contain no moving components, which do not contribute to the mechanical or electrostatic functioning of the cartridges, and which have relatively low value.

In HRL 560768, Customs held that the country of origin of the refurbished cartridges is the country of origin of the used cartridges, the country of origin of the single material that imparts the essential character to the good. We also found that since direct physical identification of the origin of the refurbished cartridges may not be practical, the country of origin of these cartridges may be determined on the basis of an inventory management method provided under the appendix to 19 CFR Part 181.

In requesting reconsideration, Xerox questions Customs legal analysis and also clarifies the facts upon which Customs determination was based.

ISSUE:

What are the marking requirements for the imported cartridges?

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines country of origin as:

The country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin within the meaning of this part; however for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added.)

Section 134.1(j), Customs Regulations (19 CFR 134.1(j)), provides that the NAFTA Marking Rules are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. A good of a NAFTA country is defined in 19 CFR 134.1(g) as an article for which the country of origin is Canada, Mexico, or the U.S. as determined under the NAFTA Marking Rules set out at 19 CFR Part 102. Section 102.11, Customs Regulations (19 CFR 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for marking purposes. Paragraph (a) of this section states that the country of origin of a good is the country in which:

(1) The good is wholly obtained or produced; (2) The good is produced exclusively from domestic materials; or Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

As the imported good in this case is neither wholly obtained or produced nor produced exclusively from domestic (Canadian) materials, we must first apply 19 CFR 102.11(a)(3). The finished cartridges are classifiable under



subheading 8473.30.30, HTSUS. The applicable change in tariff classification for heading 8473 is set out in section 102.20(o), Section XVI, Chapters 84 through 85, which provides:

8473 . . . A change to heading 8473 from any other heading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly.

Xerox claims that as several components of non-Canadian origin which are assembled into the imported cartridges are classifiable under heading 8473 (i.e., machine-dedicated plastic cartridge housings), the requisite tariff shift will not be satisfied. In its analysis, Xerox considers the foreign components salvaged from the disassembled cartridge (e.g., plastic housing cartridges) as the “foreign material” for purposes of 19 CFR 102.11(a)(3).

#### HRL 560768

In HRL 560768, we concurred with Xerox that the requisite tariff shift did not occur, but differed as to what constitutes the “foreign material” for purposes of 19 CFR 102.11(a)(3). We stated the following:

However, the material that is imported into Canada (i.e., the foreign material) is not component parts of cartridges, but complete (albeit used) cartridges. Therefore, the question presented is whether this foreign material undergoes a change in tariff classification or other requirement set out in section 102.20 for the good. In this regard, a comparison between the used cartridges imported into Canada and the refurbished cartridges exported from Canada must be made. Based upon this comparison, it is clear that the requisite tariff shift will not occur.

We also cited 19 CFR 102.17, which provides that:

A foreign material shall not be considered to have undergone the applicable change in tariff classification set out in section 102.20 . . . or to have met any other applicable requirements of those sections merely by reason of . . . (b) dismantling or disassembly.

As we determined that 19 CFR 102.11(a)(3) was not applicable for determining the country of origin of the imported cartridges, we next applied 19 CFR 102.11(b) of the hierarchical rules. This section provides as follows:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a), the country of origin of the good:

(1) Is the country or countries of origin of the single material that imparts the essential character of the good, or

If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter. When determining the essential character of a good under 19 CFR 102.11, 19 CFR 102.18(b)(1) provides that only domestic and foreign materials that are classified in a tariff provision from which a change is not allowed under the 102.20 specific rule or other requirements applicable to the good shall be taken into consideration. Section 102.18(b)(1)(iii), Customs Regulations (19 CFR 102.18(b)(1)(iii)), provides that if there is only one material that is classified in a tariff provision from which a change in tariff classification is not allowed, then that material will represent the single material that imparts the essential character to the good under 19 CFR 102.11.

In HRL 560768, Xerox claimed that it was impossible to find that any single component of the imported toner cartridges imparted the essential character, and that each cartridge contained several components of roughly coequal importance in the function of the article. The components of equal importance were stated to be the photoreceptor, toner, developing unit, and housing. In response, we stated as follows:

However, as stated earlier, the foreign material under the facts of this case is the imported complete cartridges, not the components of such cartridges, extracted as a result of the disassembly operation. Thus, there is only one material, the imported cartridge, that does not undergo any change in tariff classification as a result of the tear down. Accordingly, pursuant to section 102.18(b)(iii), we find that the imported cartridge is the single material that imparts the essential character to the refurbished good.

Xerox believes that Customs erred in finding that the spent cartridges are the single foreign material incorporated in the imported good. It points out that the actual components that are incorporated in the imported cartridge are usually plastic parts, such as housing components, which do not contribute to the essential character of the good and do not add significant value. Xerox states that the components which contribute to the mechanical function of the cartridges, such as photoreceptors, mag rollers, and cleaner/wiper blades are replaced in virtually all cases. As noted, above, Xerox also states that only about 15% of the cost of the imported cartridges is represented by parts salvaged from old cartridges.

Customs believes that its position set forth in HRL 560768 as to what constitutes foreign material under 19 CFR 102.11(a)(3) is supported by the regulatory scheme under Part 102. In this regard, we note that 19 CFR 102.17 refers to a "Foreign material" which shall not be considered to have undergone the applicable change in classification by reason of dismantling or disassembly. The term "Foreign material" is specifically defined under 19 CFR 102.1(e) as "a material whose country of origin is not the same country as the country in which the good is produced." Section 102.11(a)(3) refers to a ". . . foreign material incorporated in that good . . . ." As the term "foreign material" has the same meaning under 19 CFR 102.1(e), 102.11(a)(3), and 102.17, it is Customs position that the "foreign material" referred to in 19 CFR 102.11(a)(3) which is incorporated in the good must also be the unassembled material imported into Canada, and not its component parts as disassembled. The language of 19 CFR 102.17 clearly identifies the unassembled article as the "Foreign material," and not the parts salvaged therefrom.

However, while Xerox differs with Customs determination as to what constitutes "foreign material," it states that it lacks reliable information concerning the origin of either the spent cartridges or of the components salvaged from those cartridges. In this regard, Xerox states that origin cannot be determined through physical inspection of the cartridge nor does it have reliable sources from which it can determine the origin of the cartridges. Thus, Xerox believes that 19 CFR 102.11(b) is inapplicable, as an inventory management method must depend upon accurate and reliable information as to origin, which is lacking in this case. We note that Customs determination in HRL 560768 that 19 CFR 102.11(b) was applicable was based on an understanding of the facts that the country of origin of the used cartridges could be determined.

Accordingly, based on the lack of identifiable physical markings and reliable data as to origin, we find that 19 CFR 102.11(b) cannot be used to determine the country of origin of the cartridges. Further, 19 CFR 102.11(c) cannot be used as the cartridges are not specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3.

Therefore, the next step in the hierarchal scheme is section 102.11(d), which provides as follows:

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

If the good was produced only as a result of minor processing, the country of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;

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

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

“Minor processing” is defined in section 102.1(m) as including, in part, the mere dilution with water or another substance, cleaning, application of preservative or decorative coatings, trimming, filing, or cutting off of small amounts of excess materials, unloading, reloading, putting up in measured doses, packing, repacking, testing, marking, sorting, or grading, ornamental or finishing operations incidental to textile good production. “Simple assembly” is defined in section 102.1(o) as “the fitting together of five or fewer parts all of which are foreign (excluding fasteners such as screws, bolts, etc.) by bolting, gluing, soldering, sewing or by other means without more than minor processing.”

We find that the operations performed in Canada, as described, *supra*, constitute more than “minor processing” and exceed a “simple assembly.” Accordingly, 19 CFR 102(d)(1) and 102(d)(2) are inapplicable. We conclude that pursuant to 19 CFR 102.11(d)(3), the country of origin of the good is Canada, the last country in which the good underwent production prior to entering the U.S. (“Production” is defined under 19 CFR 102.1(n) and includes “. . . manufacturing, processing or assembling a good.”)

#### HOLDING:

Based on the information provided:

(1) For purposes of determining whether there is a change in tariff classification, pursuant to the applicable rule under 19 CFR 102.20, the “foreign material” incorporated in a refurbished photoreceptor cartridge is considered to be the “spent” cartridge imported into Canada, and not its component parts resulting from disassembly of the spent cartridge.

(2) Pursuant to 19 CFR 102.11(d)(3), the country of origin of the refurbished cartridge is Canada, the last country in which the good underwent production prior to entering the U.S.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without

a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN DURANT,  
*Director Commercial Rulings Division.*

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,

HQ H012926  
MAR-05 OT:RR:CTF:VS H012926 HEF  
CATEGORY: Marking

MR. JOHN M. PETERSON, ESQ.  
NEVILLE, PETERSON & WILLIAMS  
17 State Street, 19th Floor  
New York, New York 10004

RE: Revocation of HQ 560768 and HQ 561412; country of origin marking of remanufactured photoreceptor cartridges

DEAR MR. PETERSON:

This letter is in reference to two Headquarters Ruling Letters, issued to you on behalf of Xerox Corporation, regarding the country of origin marking requirements applicable to certain remanufactured photoreceptor cartridges. The first letter, Headquarters Ruling Letter ("HQ") 560768, was issued on May 26, 1998. The second letter, HQ 561412, dated January 31, 2000, is a reconsideration of HQ 560768.

In HQ 560768, Customs and Border Protection ("CBP") held that the country of origin of the remanufactured cartridges pursuant to section 102.11(b), Customs Regulations (19 C.F.R. § 102.11(b)), was the country of origin of the single material that imparted the essential character to the goods, which was the used cartridges. In HQ 561412, for purposes of determining whether there was a change in tariff classification pursuant to the applicable rule under 19 C.F.R. § 102.20, CBP only considered the used cartridge imported into Canada as a "foreign material."

We have had an opportunity to review both of these rulings. For the reasons set forth below, we hereby revoke HQ 560768 and HQ 561412.

FACTS:

The imported merchandise consists of remanufactured photoreceptor cartridges designed for use with automatic data processing ("ADP") laser printers. Xerox states that the remanufactured cartridges are classifiable under subheading 8473.30.30, Harmonized Tariff Schedule of the United States ("HTSUS"). The cartridges will be imported from Canada, and they will include a photoreceptor belt or cylinder, toner receptacle unit, toner developing unit, charge/discharge unit, and cleaning unit. A Xerox contractor manufactures the cartridges in Canada, in part from components salvaged from "spent" or used cartridges that are sourced from a variety of countries.

When the used cartridges arrive at the facility in Canada, they will undergo extensive disassembly operations. Salvageable parts from the spent cartridges will be placed in bins, and new parts will be ordered from inven-

tory. No effort will be made to identify the components that impart the essential identity to any of the spent cartridges or to keep those components together during the manufacturing process. Disassembled parts determined to be damaged or defective will be discarded. Components that are likely to be replaced include toner augers and gears, wiper blades, developer housings, and magnetic rollers. Components such as photoreceptor drums and corona wires will be replaced in virtually all cases. Xerox estimates that parts accounting for approximately 15 percent of the value of the used cartridges will be salvaged and reused. The remaining components used in the assembly of the remanufactured cartridges will be new parts originating in Canada and several other countries.

The disassembly operations are described as follows:

1. Removal of covers,
2. Removal of corona wires,
3. Removal of springs,
4. Release of springs,
5. Removal of plastic pins,
6. Separation of developer units from waste hoppers,
7. Removal of metal axle from gear housing,
8. Removal of photoreceptor drum,
9. Removal of metal wiper blade,
10. Vacuum cleaning of waste hopper to remove toner chemicals therefrom,
11. Inspection of toner auger (agitator) paddle and white gears,
12. Cleaning of wiper blade,
13. Inspection of wiper blade,
14. If wiper blade is suitable for reuse, dipping wiper blade in cleaning solution,
15. Cleaning of wiper blade removed from solution,
16. Inspection of wiper blade,
17. Reinstallation of blade on clean waste hopper,
18. Inspection of developer housing,
19. Vacuum removal of toner chemicals from housing,
20. Removal and inspection of magnetic roller, and
21. Adjustment of tolerances and sealing of developer unit.

The assembly operations are described as follows:

1. Cleaning of magnetic roller (magnetic rollers will be replaced in virtually all cases),
2. Filling of toner hopper with a new supply of electrostatic toner chemical,
3. Checking for leakage in refilled cartridges,
4. Affixing traceability label on cartridge,
5. Cleaning of corona wire in ultrasonic bath,
6. Drying of corona wire and installation in a clean container,
7. Installation of new photoreceptor drum (100 percent replacement part),
8. Installation of metal axle into cartridge housing,
9. Installation of corona wire (many of which will be new replacement parts),
10. Application of toner chemical on magnetic roller,
11. Assembly of finished developer unit to waste hopper,
12. Reinstallation of cartridge cover on housing,

13. Testing of cartridge and completion of "traceability card," and
14. Sealing and labeling of refurbished cartridges.

## ISSUE:

What is the country of origin of the remanufactured cartridges for marking purposes?

## LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304) provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 C.F.R. Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. "Country of origin" is defined in 19 C.F.R. § 134.1(b) as follows:

"Country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j), Customs Regulations (19 C.F.R. § 134.1(j)), provides that the "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. A "good of a NAFTA country" is defined in 19 C.F.R. § 134.1(g) as an article for which the country of origin is Canada, Mexico or the United States, as determined under the NAFTA Marking Rules set out at 19 C.F.R. Part 102. Section 102.11, Customs Regulations (19 C.F.R. § 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for marking purposes. Paragraph (a) of this section states that the country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

As the imported cartridges are neither wholly obtained or produced nor produced exclusively from domestic (Canadian) materials, we first apply 19 C.F.R. § 102.11(a)(3). Xerox states that the finished cartridges are classifiable in subheading 8473.30.30, HTSUS. Assuming this classification is correct, the applicable change in tariff classification for heading 8473, HTSUS, set out in section 102.20(o), Section XVI, Chapters 84 through 85, provides:

8473 . . . A change to heading 8473 from any other heading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly.

Xerox claims that several of the components assembled into the cartridges are classified under heading 8473, HTSUS. These components include the magnetic rollers, photoreceptor drums, and machine-dedicated plastic cartridge housings. Xerox argues that to the extent that these components are not of Canadian origin, the requisite tariff shift will not be satisfied.

We find that the “foreign materials” to be considered for purposes of 19 C.F.R. § 102.11(a)(3) include not only the complete, used cartridges, but also the new parts used in the assembly of the remanufactured cartridges, such as the photoreceptor drums, magnetic rollers, corona wires, etc. Therefore the question presented is whether these foreign materials, imported into Canada, undergo the change in tariff classification or other requirements set out in section 102.20 for the good. The used cartridges are classified under the same heading as the remanufactured cartridges. Furthermore, with regard to the disassembly of the used cartridges in Canada, 19 C.F.R. § 102.17 provides that:

A foreign material shall not be considered to have undergone an applicable change in tariff classification specified in section 102.20 . . . or to have met any other applicable requirements of those sections merely by reason of . . . (b) dismantling or disassembly.

Therefore, the foreign used cartridges will not undergo the prescribed tariff shift even after disassembly and reassembly in Canada. We also note that some of the new parts such as the photoreceptor drums and magnetic rollers are also classified under heading 8473, HTSUS. To the extent that the new parts of foreign origin are classified under heading 8473, HTSUS, they will also fail to undergo the applicable change in tariff classification set out in section 102.20. Therefore, 19 C.F.R. § 102.11(a)(3) is inapplicable for determining the country of origin of the remanufactured cartridges.

Consequently, our analysis proceeds to 19 C.F.R. § 102.11(b)(1) of the hierarchical rules. This section provides:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good, or
- (2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.

When determining the essential character of a good under 19 C.F.R. § 102.11, 19 C.F.R. § 102.18(b)(1) provides that only domestic and foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good shall be taken into consideration. Section 102.18(b)(2), Customs Regulations (19 C.F.R. § 102.18(b)(2)), provides:

For purposes of determining which one of two or more materials described in paragraph (b)(1) of this section imparts the essential charac-

ter to a good under § 102.11, various factors may be examined depending upon the type of good involved. These factors include, but are not limited to, the following:

- (i) The nature of each material, such as its bulk, quantity, weight or value; and
- (ii) The role of each material in relation to the use of the good.

Several foreign and domestic materials used in the assembly of the refurbished cartridges do not meet the prescribed tariff shift. These materials include the foreign used cartridges and various new parts like the photoreceptor drums and magnetic rollers classified under heading 8473.

Xerox claims that it is impossible to find any single component of the imported toner cartridges that imparts the essential character, and that several components are roughly of coequal importance to the function of the article. Xerox states that the components of equal importance are the photoreceptor, toner, developing unit, and housing. As stated above, we do not consider the components salvaged in the disassembly of the used material to be a "foreign material." Therefore, the plastic housing is not taken into consideration pursuant to 19 C.F.R. § 102.18(b)(1). However, the used cartridges and the new component parts that fail to satisfy the change in tariff classification set out in section 102.20 are taken into consideration. From among the foreign and domestic materials that do not meet the prescribed tariff shift, we agree that no one single material imparts the essential character to the remanufactured cartridge. The used cartridge is significant in that salvaged parts from the cartridge are used in the production of the remanufactured cartridge. In addition, new parts like the photoreceptor drum, for example, contribute significantly to the functionality of the remanufactured cartridge. Therefore, 19 C.F.R. § 102.11(b) cannot be used to determine the country of origin of the remanufactured cartridges.

The country of origin of the remanufactured cartridges cannot be determined by application of 19 C.F.R. § 102.11(c), as the cartridges are not specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture, or composite good pursuant to General Rule of Interpretation 3.

Accordingly, we next consider section 102.11(d) of the hierarchical rules, which provides:

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

(1) If the good was produced only as a result of minor processing, the country of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;

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

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



19 C.F.R. § 102.11(d).

“Minor processing” is defined in 19 C.F.R. § 102.1(m) as including, in part, the mere dilution with water or another substance, cleaning, application of preservative or decorative coatings, trimming, filing, or cutting off small amounts of excess materials, unloading, reloading, putting up in measured doses, packing, repacking, packaging, repackaging, testing, marking, sorting, or grading, ornamental or finishing operations incidental to textile good production, repairs and alterations, washing laundering, or sterilizing. “Simply assembly” is defined in section 102.1(o) as “the fitting together of five or fewer parts all of which are foreign (excluding fasteners such as screws, bolts, etc.) by bolting, gluing, soldering, sewing or by other means without more than minor processing.

Based on the facts provided, we find that the operations performed in Canada constitute more than “minor processing” and exceed a “simple assembly.” Therefore, subparagraphs (1) and (2) of 19 C.F.R. § 102.11(d) are inapplicable. Consequently, by application of 19 C.F.R. § 102.11(d)(3), the country of origin of the remanufactured cartridge is the last country in which the good underwent production. The term “production,” as defined in 19 C.F.R. § 102.1(n), includes manufacturing, processing, and assembling a good. The operations performed in Canada constitute production. Accordingly, we find that the country of origin of the remanufactured cartridge is Canada, the last country in which the good underwent production prior to entering the United States.

**HOLDING:**

Based on the information provided and pursuant to 19 C.F.R. § 102.11(d)(3), the country of origin of the remanufactured cartridges is Canada, the last country in which the goods underwent production.

**EFFECT ON OTHER RULINGS:**

HQ 560768, dated May 26, 1998, and HQ 561412, dated January 31, 2000, are hereby revoked.

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

**GENERAL NOTICE**

**19 CFR PART 177**

**REVOCATION OF A RULING LETTER AND TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
“TZATZIKI” GARLIC DIP**

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

**ACTION:** Notice of revocation of ruling letter and treatment relating to the tariff classification of “tzatziki” garlic dip.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19

U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter and any treatment on substantially identical transactions pertaining to the tariff classification of “tzatziki” garlic dip under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of this proposed action was published in the CUSTOMS BULLETIN on March 21, 2007. One comment from an interested party was received in response to this notice.

**EFFECTIVE DATE:** This revocation is effective for merchandise entered or withdrawn from warehouses for consumption on or after October 14, 2007.

**FOR FURTHER INFORMATION CONTACT:** Tom Peter Beris, Tariff Classification and Marking Branch, at (202) 572–8789.

**SUPPLEMENTARY INFORMATION:**

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the March 21, 2007 CUSTOMS BULLETIN (Vol. 41, No. 13) proposing to revoke a ruling letter pertaining to the tariff classification of “tzatziki” garlic dip. One comment in favor of the proposed revocation was received in response to the notice.

As stated in the proposed notice, this revocation covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP revokes NY 812305 and any other ruling not specifically identified, pursuant to the analysis set forth in HQ W968353, attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by the CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

**DATED:** August 1, 2007

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,

**HQ W968353**

August 1, 2007

**CLA-2 OT: RR: CTF: TCM W968353 ARM**

**CATEGORY:** Classification

**TARIFF NO.:** 2103.90.9091

MR. STEPHEN WALDMAN  
WESTHILL DAIRY INC.  
60 Brisbane Rd.

*Downsview, Ontario M3J 2K2 Canada*

**RE:** Tariff classification of "Tzatziki" Garlic Dip from Canada; Revocation of NY 812305

DEAR MR. WALDMAN:

This is in regard to New York Ruling Letter (NY) 812305, dated November 14, 1995, issued to you for the tariff classification of the above captioned

product under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling letter, the U.S. Customs Service (now U.S. Customs and Border Protection “CBP”) determined that the product referred to as “Tzatziki” Garlic Dip was classified in heading 1901, HTSUS, specifically subheading 1901.90.4200, HTSUS, which provides, in relevant part, for food preparations of goods of 0401 to 0404 . . . not elsewhere specified or included: Other: Other: dairy products described in Additional U.S. Note 1 to Chapter 4<sup>1</sup>: dairy preparations containing over 10 percent by weight of milk solids: described in Additional U.S. Note 10 to Chapter 4<sup>2</sup> and entered pursuant to its provisions. This provision applied if the product was imported in quantities that fall within the limits described in additional U.S. Note 10 to Chapter 4, HTSUS. The ruling further stated that if the quantitative limits of additional U.S. Note 10 to Chapter 4 had been reached, the product would be classified in subheading 1901.90.4300, HTSUS, which provides, in relevant part, for food preparations of goods of 0401 to 0404: Other: Other: Other.

We have recently had an opportunity to revisit this issue and based upon our analysis and for the reasons set forth below, now consider “Tzatziki” Garlic Dip to be classified under heading 2103, HTSUS, specifically subheading 2103.90.9091, HTSUS, which provides for sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared Mustard: Other: Other: Other.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on March 21, 2007, in Volume 41, Number 13 of the CUSTOMS BULLETIN.

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<sup>1</sup> Add'l U.S. Note 1 to Chapter 4 reads:

For the purposes of this schedule, the term “dairy products described in additional U.S. note 1 to chapter 4” means any of the following goods: malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and 3 to chapter 18); or, dried milk, whey or buttermilk (of the type provided for in subheadings 0402.10, 0402.21, 0403.90 or 0404.10) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported.

<sup>2</sup> Add'l U.S. Note 10 to Chapter 4 reads:

The aggregate quantity of dairy products described in additional U.S. note 1 to chapter 4, entered under subheadings 0402.29.10, 0402.99.70, 0403.10.10, 0403.90.90 0404.10.11, 0404.90.30, 0405.20.60, 1517.90.50, 1704.90.54, 1806.20.81, 1806.32.60, 1806.90.05, 1901.10.35, 1901.10.80, 1901.20.05, 1901.20.45, 1901.90.42, 1901.90.46, 2105.00.30, 2106.90.06, 2106.90.64, 2106.90.85 and 2202.90.24 in any calendar year shall not exceed 4,105,000 kilograms (articles the product of Mexico shall not be permitted or included under the aforementioned quantitative limitation and no such articles shall be classifiable therein).

One comment supporting the proposed action was received in response to this notice.

**FACTS:**

NY 812305 presents the facts of the merchandise as follows:

An ingredients breakdown and sample accompanied your letter. The sample was forwarded to the U.S. Customs laboratory for analysis. Tzatziki Garlic Dip is a thick, creamy product, white in color, composed of 85 percent cream, 10 percent cucumber, 4 percent vegetable oil, and less than one percent each of salt, bacterial culture, and fresh garlic. The product is made by adding a bacterial culture to pasteurized cream and allowing the cream to ferment until a desired P.H. is achieved, cooling the product until it thickens, mixing in cucumber, oil, garlic and salt, cooling to 40 degrees Fahrenheit, and packaging. Laboratory analysis determined the overall fat content to be 12.1 percent. The article is packed in 8-ounce plastic cups for retail sale, and in 5-pound plastic pails for food service use.

**ISSUE:**

What is the proper classification of the “Tzatziki” Garlic Dip under the HTSUS?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

When the subheadings, rather than the headings are at issue, GRI 6 is applied. GRI 6 provides in pertinent part that: “the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and *mutatis mutandis*, to [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires.”

The headings and subheadings under consideration are as follows:

1901 Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:

1901.90 Other:

Other:

Dairy products described in additional U.S. note 1 to chapter 4:

	Dairy preparations containing over 10 percent by weight of milk solids:
1901.90.4200	Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions
1901.90.4300	Other
	* * *
2103	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:
2103.90	Other:
	Other:
2103.90.90	Other
2103.90.9091	Other

NY 812305 based the classification of the “Tzatziki” Garlic Dip upon its identity as a food preparation based on cream, i.e., a good of heading 04.01 to 04.04, HTSUS. That provision, however, is qualified. It applies only if the good is “not elsewhere specified or included.” It is CBPs belief that “tzatziki” is provided for elsewhere in the HTSUS. Specifically, we find that “tzatziki” meets the parameters for classification as a sauce, in heading 2103, HTSUS. In *Nestle Refrigerated Food Co v. United States*, 18 C.I.T. 661, 668 (1994), the court concluded that the common meaning of “other tomato sauces” is based on the common meaning of the term “sauce.” The *Nestle* court stated,

[i]n 1894, the U.S. Supreme Court reviewed the common meaning of the term “sauce” and determined that: ‘[t]he word “sauce,” as commonly used, designates a condiment, generally but not always of liquid form, eaten as an addition to and together with a dish of food, to give it flavor and make it more palatable; and is not applied to anything which is eaten, alone or with a bit of bread, either for its own sake only, or to stimulate the appetite for other food to be eaten afterwards.’

*Id.* at 668 (citations omitted).

The court in *Nestle*, following the seminal *Bogle v. Magone*, 152 U.S. 623, 625–26 (1894) (subsequently followed by *Del Gaizo Distrib. Corp. v. United States*, 24 CCPA 64, T.D. 48,376 (1936)) and its progeny, determined that in ascertaining whether a product fits within the common meaning of sauce, the court will “examine a variety of key features, including its ingredients, flavor, aroma, texture, consistency, actual and intended use, and marketing.” *See, e.g., Neuman & Schwiers Co.*, 18 CCPA at 3. The court further concluded that of these key features, actual and intended use are of paramount importance and that a product is a sauce if it can be used “as is,” that is, if it may be eaten as an accompaniment to other foods to make such foods more flavorful and palatable. “Whether a product is fit for use as a sauce depends upon more than the mere possibility of use; rather, substantial actual use as a sauce must be demonstrated. *See Wah Shang Co. v. United States*, 44 CCPA 155, 159, C.A.D. 654 (1957). Also, according to *Nestle*, a product’s physical features are also considered in light of their effect on the product’s ability to be used as a sauce.

In this instance, we find that in its condition as imported, the product is ready for use principally as a dressing or dip. These uses place it within the class or kind of goods used as a sauce. *See, e.g.,* NY H81014 (dated May 29, 2001); J81714 (dated March 20, 2003); M81138 (dated March 28, 2006). *See also* HQ 962417 (dated March 3, 1999).

Subsequent to publishing the Proposed Notice of Revocation in the March 21, 2007 CUSTOMS BULLETIN, CBP received one comment in support of the proposed action. That comment reiterated the line of case law cited above, as well as CBPs treatment of similar goods.

For the reasons set forth above, we find that the ready to use “Tzatziki” Garlic Dip falls within the scope of “sauces” of heading 2103, HTSUS. Because it meets the terms of that heading, it cannot fall to be classified under heading 1901, HTSUS, as it is elsewhere specified or included.

**HOLDING:**

For the reasons above by application of GRI 1, the subject “Tzatziki” Garlic Dip is classified under heading 2103, HTSUS, as a sauce. It is provided for under subheading 2103.90.9091, HTSUSA, as: “Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Other: Other: Other: Other.” The 2007 column one, general rate of duty is 6.4%.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the Internet at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

**EFFECT ON OTHER RULINGS:**

NY 812305, dated November 14, 1995 is hereby revoked. In accordance with 19 U.S.C. 1628(c), this ruling will be come effective 60 days after its publication in the CUSTOMS BULLETIN.

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

