

# U.S. Customs and Border Protection

## *General Notices*

### **APPROVAL OF CAMIN CARGO CONTROL, INC., AS A COMMERCIAL GAUGER**

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

**ACTION:** Notice of approval of Camin Cargo Control, Inc., as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Camin Cargo Control, Inc., 73 Castle Coakely, Unit 3, Christiansted, St. Croix, VI 00821, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The approval of Camin Cargo Control, Inc., as commercial gauger became effective on July 19, 2007. The next triennial inspection date will be scheduled for July 2010.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: May 15, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, May 23, 2008 (73 FR 30136)]

**ACCREDITATION OF INTERTEK USA, INC., AS A  
COMMERCIAL LABORATORY**

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

**ACTION:** Notice of accreditation of Intertek USA, Inc., as a commercial laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12, Intertek USA, Inc., 303 Weatherwood Street, Arkansas City, AR 71630, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation of Intertek USA, Inc., as commercial laboratory became effective on February 27, 2008. The next triennial inspection date will be scheduled for February 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: May 15, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, May 23, 2008 (73 FR 30136)]

**ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 4398 Highway 77 N, Marion, AR 72364, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on February 26, 2008. The next triennial inspection date will be scheduled for February 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: May 15, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, May 23, 2008 (73 FR 30135)]

**19 CFR Part 111****Docket No. USCBP – 2008 – 0059****RIN 1651 – AA74****CUSTOMS BROKER LICENSE EXAMINATION INDIVIDUAL  
ELIGIBILITY REQUIREMENTS**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the requirements that an individual must satisfy in order to take the written examination for an individual broker's license, as administered by Customs and Border Protection ("CBP"). This proposed rule would require that to take the written examination, an individual would be required to be a U.S. citizen on the date of examination who has attained the age of 21 prior to the date of examination and is not an officer or employee of the United States Government. The proposed amendments would more closely align the requirements for taking the written examination with the requirements an individual must satisfy in order to obtain a customs broker's license. As a result, this proposed rule would facilitate the overall customs broker licensing process by helping to ensure that those taking the examination are not automatically precluded from obtaining a license by reason of age, citizenship status, or employment.

**DATES:** Comments must be received on or before July 28, 2008.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2008-0059.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W. (Mint Annex), Washington, DC 20229.

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

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

**FOR FURTHER INFORMATION CONTACT:** Alfred S. Morawski, Chief, Broker Compliance Branch, Office of International Trade, (202) 863-6505.

**SUPPLEMENTARY INFORMATION:**

**Public Participation**

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

**Background**

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others. Section 641 also sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. In the case of an applicant for an individual broker's license, § 641 states that the Secretary of the Treasury may conduct an examination to determine such applicant's qualifications for a license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as necessary to protect importers and the revenue of the United States and to carry out the provisions of § 641.

On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et. seq.*, Pub. L. 107-296 (the "HSA"), establishing the Department of Homeland Security. Pursuant to § 403(1) of the HSA, the United States Customs Service was transferred from the Department of the Treasury to the Department of Homeland Security effective March 1, 2003. In addition, pursuant to

§ 1502 of the HSA, the “Customs Service” was renamed as the “Bureau of Customs and Border Protection.” Subsequently, on April 23, 2007, a Notice was published in the **Federal Register** (72 FR 20131) to inform the public that the name of the Bureau of Customs and Border Protection had been changed by the Department of Homeland Security to “U.S. Customs and Border Protection (CBP),” effective March 31, 2007.

Treasury Order No. 100–16 (see Appendix to 19 CFR Part 0) delegated to the Department of Homeland Security the authority to prescribe the rules and regulations relating to customs brokers.

The regulations issued under the authority of § 641 are set forth in part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These rules include the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 (19 CFR 111.11) sets forth the basic requirements for obtaining a broker’s license. Paragraphs (a)(1) through (a)(4) of § 111.11 provide that, in order to obtain a customs broker’s license, an individual must be: a citizen of the United States upon applying for the license and not an officer or employee of the United States; attain the age of 21 prior to the date of application for such license; be of good moral character; and, obtain a passing grade on the written examination within a 3-year period before submission of the application.

The regulations relating to the written examination for an individual customs broker’s license are set forth in § 111.13 (19 CFR 111.13). Paragraph (b) of § 111.13, pertaining to the date and place of the examination, provides that an individual intending to take the examination must advise the appropriate port director in writing at least 30 calendar days prior to the scheduled examination date and remit the \$200 examination fee prescribed in paragraph (a) of § 111.96. There are no additional requirements in § 111.13 that must be fulfilled in order for an individual to sit for the customs broker’s license examination.

### **Explanation of Amendments**

This document proposes to amend § 111.13 in order to more closely align the basic requirements an individual must satisfy in order to take the written examination for a broker’s license with the basic requirements an individual must satisfy in order to actually obtain an individual broker’s license. In order to be eligible to take the written examination under the proposed amendments, an individual would be required to be a citizen of the United States on the date of examination and not an officer or employee of the United States Government, and to attain the age of 21 prior to the date of examination. By more closely aligning the requirements for taking

the examination with the requirements for obtaining a license, the proposed amendments would facilitate the overall licensing process by helping to ensure that those sitting for the examination are not automatically precluded from obtaining a license by reason of age, citizenship status, or employment. For example, under the current regulations, an individual could take and pass the examination but not be eligible to obtain a license because he or she has not attained the age of 21, is not a U.S. citizen, or is employed by the U.S. Government. The proposed amendments would prevent this from occurring and, as a result, such an individual would be spared the time and expense of preparing for and taking the examination. CBP would also benefit as the proposed rule would prevent unnecessary expenditures of resources in administering the examination with respect to individuals who are ineligible to obtain a license.

In addition, it is noted that limiting the examination to U.S. citizens is a reasonable security measure that conforms to the existing citizenship requirement for obtaining a license. Moreover, by barring U.S. Government employees from taking the examination, the proposed amendments would help to eliminate the appearance of any conflict of interest or unfair advantage that might be associated with their employment in connection with taking the examination.

This document also proposes non-substantive amendments to § 111.13(a), (c), and (e) to reflect the nomenclature changes effected by the transfer of CBP to the Department of Homeland Security.

#### **Inapplicability of Regulatory Flexibility Act and Executive Order 12866**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities because the proposed rule would merely result in more closely aligning the requirements for taking the written examination for an individual customs broker's license with the requirements for actually obtaining a customs broker's license. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. In addition, this document does not meet the criteria for a "significant regulatory action" as specified in E.O.12866.

#### **Signing Authority**

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).



### List of Subjects

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Reporting and recordkeeping requirements.

#### PROPOSED AMENDMENTS TO THE CBP REGULATIONS

It is proposed to amend part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111) as set forth below.

#### PART 111 – CUSTOMS BROKERS

1. The general authority citation for part 111 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

\* \* \* \* \*

2. In § 111.13:

a. Paragraph (a) is amended by removing the words “Customs Headquarters” and adding, in their place, the words “Customs and Border Protection Headquarters”;

b. Paragraph (b) is amended by revising the heading and adding a new first sentence;

c. Paragraph (c) is amended by removing the word “Customs” each place it appears and adding, in its place, the term “CBP”; and

d. Paragraph (e) is amended by removing the word “Customs” in the first sentence and adding, in its place, the term “CBP”.

The additions and revision to paragraph (b), referenced above, read as follows:

**§ 111.13 Written examination for individual license.**

\* \* \* \* \*

(b) Basic requirements, date, and place of examination. In order to be eligible to take the written examination, an individual must be a citizen of the United States on the date of examination and not an officer or employee of the United States Government, and attain the age of 21 prior to the date of examination. \* \* \*

\* \* \* \* \*

Date: May 21, 2008

JAYSON P. AHERN,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, May 27, 2008 (73 FR 30328)]



**International Registered Traveler Pilot Program Name  
Changed to Global Entry; Program Starting Date  
Accelerated; Changes to Enrollment Center Information**

**Docket No. USCBP-2006-0037**

**AGENCY:** Customs and Border Protection; Department of Homeland Security.

**ACTION:** General notice

**SUMMARY:** On April 11, 2008, Customs and Border Protection (CBP) published in the **Federal Register** a notice announcing a pilot international registered traveler program, then referred to as International Registered Traveler (IRT), to be operated by CBP to allow for the expedited clearance of pre-approved low-risk air travelers into the United States. This notice announces that the program is now known as Global Entry and that the starting date of the pilot program has been moved up to June 6, 2008. This notice also updates the contact information for the Enrollment Center at Washington Dulles International Airport, Sterling, Virginia.

**DATES:** The pilot will commence June 6, 2008. Applications currently are being accepted. Comments will be accepted throughout the duration of the pilot.

**FOR FURTHER INFORMATION CONTACT:** Fiorella Michelucci, Office of Field Operations, (202) 344-2564 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 11, 2008, Customs and Border Protection (CBP) published in the **Federal Register** (73 FR 19861) a notice announcing a pilot international registered traveler program, then referred to as International Registered Traveler (IRT), to be operated by CBP to allow for the expedited clearance of pre-approved low-risk air travelers into the United States. It was further announced that the pilot will begin on June 10, 2008, and will initially be conducted at the John F. Kennedy International Airport, Jamaica, New York; the George Bush Intercontinental Airport, Houston, Texas; and the Washington Dulles International Airport, Sterling, Virginia, and may expand to other locations as announced.

All aspects of the program as described in the April 11 notice are still in effect except for the changes set forth in this notice. Applications started being accepted for the pilot on May 12, 2008, and are still being accepted. Comments will be accepted throughout the duration of the pilot to the addresses provided in the April 11, 2008 notice.

### Revisions to Previous Notice

This notice is to inform the public of three changes relating to the April 11, 2008 announcement: The name of the program has been changed to “Global Entry”, and the operation of the pilot will commence on June 6, 2008, four days earlier than the date announced in the April 11, 2008 notice. This notice also updates the contact information for the Enrollment Center at Washington Dulles International Airport, Sterling, Virginia. The new telephone number for that location is 703-661-2854; the new fax number is 703-661-0013.

Date: May 20, 2008

W. RALPH BASHAM,  
Commissioner,  
U.S. Customs and Border Protection.

[Published in the Federal Register, May 27, 2008 (73 FR 20416)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, May 28, 2008*

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 International Trade.*

### GENERAL NOTICE

#### 19 CFR PART 177

#### **PROPOSED MODIFICATION OF RULING LETTER RELATING TO A CHANGE IN CONDITION OF LIQUID FUNGICIDE FOR PURPOSES OF 19 U.S.C. § 3333**

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

**ACTION:** Notice of proposed modification of ruling relating to a change in condition of liquid fungicide for purposes of 19 U.S.C. § 3333.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 USC § 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 CBP intends to modify HRL 231152 (June 13, 2006), (Attachment A), which holds that the addition of propylene glycol, to concentrated fungicide base changed the “flowability” of the mixture and thus was a change in condition for purposes of 19 U.S.C. § 3333. Comments are invited on the correctness of the proposed action.

**DATE:** Comments must be received on or before July 11, 2008.

**ADDRESS:** Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

**FOR FURTHER INFORMATION CONTACT:** Renee D. Chovanec, Entry Process and Duty Determination Branch: (202) 572–8795.

#### **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 Customs 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 Customs 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 Customs 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 HRL 231152 holding that because flowability is a characteristic not found in liquid fungicide before the addition of propylene glycol, the addition of propylene glycol imparts the characteristic of flowability to the liquid fungicide thereby changing the condition of the fungicide for purposes of 19 U.S.C. § 3333. Any person who has received an interpretive ruling concerning identical merchandise should advise CBP during this notice period. A ruling requestor's failure to advise CBP of pending ruling requests involving identical merchandise, may raise issues of reasonable care on the part of the ruling requestor or its agents, with regard to ruling requests, subsequent to the effective date of the final decision on this notice.

HRL 231152 was issued in response to a request for a ruling on whether the addition of certain ingredients to a liquid concentrated fungicide, Azoxystrobin Millbase, "changed the condition" of the concentrate for purposes of 19 U.S.C. § 3333 and drawback per 19 U.S.C. § 1313(j)(1) upon exportation to Canada. In HRL 231152 we held that "the addition of propylene glycol to the imported liquid fungicide materially alters the liquid fungicide to the extent that it is not in the same condition upon exportation to Canada. Therefore, the exported liquid fungicide is not eligible for drawback under 19 U.S.C. § 1313(j)(1)." The facts under consideration were these. Azoxystrobin Millbase concentrate was proposed to be imported into the U.S. and admitted to a foreign trade zone. The concentrate was made up of water, a dispersant / surfactant, a preservative / antibacterial agent, an antifoaming agent and the active ingredient. Within the zone propylene glycol is added. In addition, a biocide is added and a stabilizer, i.e., bentonite. The fungicide was to be tested, packaged and labeled in the zone, then exported to Canada.

In HRL 231152 CBP determined that propylene glycol was added to the imported merchandise in the U.S. to permit the fungicide to be used in cold conditions and, for that reason, the exported fungicide was not in the same condition as when imported into the U.S. Because this determination as to the purpose of the propylene glycol was sufficient to support the conclusion that the product was changed in condition for the purpose of applying the NAFTA limitation, CBP did not consider the effect of the other substances that were added along with the propylene glycol in the FTZ. The ruling requester asked CBP to reconsider its determination because the purpose of the propylene glycol was to prevent freezing during transportation and storage rather than to permit use of the fungicide in cold conditions. While our conclusion that the processing in the U.S. resulted in the exported fungicide being changed in condition under the NAFTA limitations for drawback and duty-deferral programs would remain the same, we propose to modify 231152 to reflect con-

sideration of the effect of the additional substances on the imported fungicide and to clarify the basis for our determination that the fungicide was changed in condition and was therefore subject to the NAFTA limitations.

The statement made in HRL 231152, that “Given that flowability is a characteristic not found in the liquid fungicide before the addition of propylene glycol,” was based on our conclusion that the propylene glycol was added to enable the fungicide to be used in cold weather. However, upon reconsideration of the facts in HRL 231152, we have concluded that the addition of the other ingredients to the Azoxystrobin Millbase changed the condition so that the exported fungicide was subject to the NAFTA-imposed limitations on drawback. Accordingly, we are issuing HRL W231514 (Attachment B), to modify HRL 231152 to reflect that addition to the concentrate of “flowability” is not the basis for the conclusion that the fungicide is changed in condition, though that conclusion, that the fungicide is, in fact, changed in condition, is not altered.

The addition of the three ingredients in the zone, propylene glycol, the biocide and the bentonite, does not fall into any of the exemplars in § 181.45(b)(1) and also materially alters the characteristic of the concentrate. Thus, the addition of the three ingredients is not “mere dilution,” which, when given the common meaning, means “nothing more than” “making weaker or less concentrated.” The concentration of the active ingredient is reduced from 50% to about 23% by the addition of the other ingredients, but the addition of the ingredients to the concentrate enables the active ingredient to remain in suspension so that further dilution and crop application, i.e., spraying is easier. “In order for the [end] product to be used in spray equipment, the most common means of applying the fungicide, the ingredients added after importation are necessary” because without the ingredients added in the FTZ, the active ingredient would not remain in suspension making further dilution and spraying difficult. Thus, the “mere dilution” assertion is contradicted, i.e., something in addition to a reduction in concentration happens to the Azoxystrobin Millbase. In addition, the manufacturer, Syngenta, treats the concentrate differently than it treats the finished fungicide. Syngenta refers to the concentrate as “Azoxystrobin Millbase,” product number A13367D and the exported finished fungicide as “Abound Flowable,” product number A12705A. The Azoxystrobin Millbase is imported in 1000 liter tanks but the fungicide is packaged into different containers with different labeling. The Azoxystrobin Millbase concentrate is not used in the U.S. but the Abound Flowable is sold and used in the U.S.

The exported fungicide is not in the same condition within the meaning § 3333 and § 181.45 as the imported Azoxystrobin Millbase because the addition of the ingredients to the concentrate enables the active ingredient to remain in suspension. Therefore, the

imported concentrate is changed in condition by the addition of the ingredients in the zone within the meaning of 19 U.S.C. § 3333(a) and for purposes of the limitation on duty deferral imposed by the NAFTA. Accordingly, it is proposed that HRL 231152 be modified by HRL W231514.

**DATED:** May 27, 2008

William G. Rosoff For MYLES HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HRL 231152  
FOR-4-03:RR:CTF:ER 231152 TLS  
CATEGORY: Drawback/NAFTA

MR. JOHN B. PELLIGRINI  
MCGUIREWOODS LLP  
*1345 Avenue of the Americas*  
*New York, New York 10105-0106*

RE: Ruling request exportation to Canada of liquid fungicide manufactured in foreign trade zone; NAFTA; same condition drawback; 19 U.S.C. 1313(j)(1); 19 CFR 181.45(b)(1)

DEAR MR. PELLIGRINI:

This is in response to your request for a ruling, dated September 13, 2005, on behalf of Syngenta Crop Protection, Inc. Specifically, you request a ruling determining the whether liquid fungicide manufactured in a foreign trade zone (FTZ) is eligible for drawback when exported to Canada. Our response follows.

FACTS:

Syngenta plans to formulate and package liquid fungicide at an FTZ. A bulk active ingredient manufactured in the United Kingdom will be used in the processing of the liquid fungicide. Some of the product will be withdrawn for consumption, and some for exportation to Canada.

You describe the processing of the liquid fungicide in the FTZ as follows:

The concentrated active ingredient is received in 1,pp liter tote tanks and is diluted, additional ingredients added, tested, and packaged for retail sale in Canada and the United States. . .

The conversion of the product to retail pack entails the dilution of the imported active ingredient concentrate, addition of ingredients for preservation and stabilization purposes, packaging into measured containers, and labeling and testing. . .

The only processing performed in the imported concentrate is to dilute it with propylene glycol and the addition of substances which stabilize the fungicide and protect it against biological infestation. . .

You contend that the processing done in the FTZ does not materially alter the liquid fungicide. As such, you further contend that the liquid fungicide is eligible for same condition drawback upon exportation to Canada.

**ISSUE:**

Whether the imported and subsequently processed liquid fungicide is eligible for drawback upon exportation to Canada, pursuant to the North American Free Trade Agreement, 19 U.S.C. § 1313(j)(1), and 19 CFR 181.45(b)(1).

**LAW AND ANALYSIS:**

Section 203 of the North American Free Trade Agreement (NAFTA) Implementation Act (Public Law 103-182; 107 Stat. 2057, 2086; 19 U.S.C. § 3333), provides for the treatment of goods subject to NAFTA drawback. Under 19 U.S.C. § 3333(a), such goods mean any good other than, among other things -

(2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph —

(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good[.] . . .

Furthermore, this section provides that “[a] good exported to a NAFTA country in the same condition as when imported into the United States” is not a good subject to the NAFTA drawback limitation. This section applies only to goods imported into the United States that are subsequently exported into Canada on or after January 1, 1996, or into Mexico on or after January 1, 2001. *See* Annex 303.7, section C, NAFTA; 19 CFR 181.41.

The U.S. Customs and Border Protection (CBP) Regulations issued under the authority of the NAFTA Implementation Act specifically provide for the availability of drawback on the exportation of merchandise to a NAFTA country. Under 19 CFR 181.44(g), with regard to unused goods under 19 U.S.C. § 1313(j)(1) that have changed in condition, a good that is imported under 19 U.S.C. § 1313(j)(1), that is unused in the United States, and that is shipped to Canada or Mexico not in the same condition within the meaning of 19 CFR 181.45(b)(1) may be eligible for drawback under this section, except when the shipment to Canada or Mexico does not constitute an exportation under 19 U.S.C. § 1313(j)(4).

Under 19 CFR 181.45(b), a good imported into the United States and subsequently exported to Canada or Mexico in the same condition is eligible for drawback under 19 U.S.C. § 1313(j)(1) without regard to the limitation on drawback provided for in 19 CFR 181.44 (i.e., that such drawback may be granted only on the lesser of the total duties paid or owed on the importation into the United States or the total amount of duties paid on the exported good on its subsequent importation into Canada or Mexico). Subparagraph (b)(1) of section 181.45 provides that:



For purposes of this subpart, a reference to a good in the “same condition” includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

- (i) Mere dilution with water or another substance;
- (ii) Cleaning, including removal of rust, grease, paint or other coatings;
- (iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;
- (iv) Trimming, filing, slitting, or cutting;
- (v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or
- (vi) Testing, marking, labeling, sorting or grading.

Before determining whether the liquid fungicide is “used” within the meaning of section 1313(j)(1), we must determine the intended purpose of the subject merchandise.

You state that the processing done in the FTZ is intended to dilute the liquid fungicide with propylene glycol “and the addition of substances which stabilize the fungicide and protect it against biological infestation.” You cite CBP Ruling HQ 228961 (January 23, 2002), to support your claim that the addition of a biocide is a dilution of the liquid fungicide permitted under 19 CFR 181.45(b)(1)(i). You also claim the fact that the process begins and ends with liquid fungicide is relevant in determining whether or not it has been materially altered, citing CBP Ruling HQ 227312 (December 4, 1997). You also cite CBP Ruling HQ 228056 (February 25, 1999) to support your claim that adding inert materials or a wetting agent does not change the essential character of the liquid fungicide.

We agree that the processing you describe begins and end with liquid fungicide as a product. Our Office of Laboratory and Scientific Services (OLSS) has reviewed the specifications and the processing description you provided. OLSS has concluded that the characteristic of active ingredient in the liquid fungicide, as imported, is not changed by the processing done in the FTZ. OLSS has found, however, that propylene glycol is added to liquid fungicide to prevent the freezing of the liquid. Without the addition of propylene glycol, the liquid fungicide is susceptible to freezing in the colder climate of Canada, affecting its “flowability.” Thus, the article produced as a result of the processing in the FTZ goes beyond “mere dilution of the imported product,” inconsistent with our finding in HQ 228961, *supra*. Syngenta markets the product on its website as “Abound(r) Flowable Fungicide,” stating that it “is available as a flowable suspension concentrate (SC) formulation, . . .” Given that flowability is a characteristic not found in the liquid fungicide before the addition of propylene glycol, we conclude that the addition of such to the liquid fungicide changes the condition of the liquid fungicide to the extent that it has become used. The use in this case consists of using the imported article to produce an article suitable for use as a liquid fungicide in potentially freezing climate, such as Canada. Therefore, the product, as exported from the FTZ to Canada, is not eligible for drawback under 19 U.S.C. § 1313(j)(1).

**HOLDING:**

The addition of propylene glycol to the imported liquid fungicide materially alters the liquid fungicide to the extent that it is not in the same condition upon exportation to Canada. Therefore, the exported liquid fungicide is not eligible for drawback under 19 U.S.C. § 1313(j)(1).

WILLIAM G. ROSOFF,  
*Chief,*  
*Entry Process and Duty Refunds Branch.*

## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HRL W231514  
OT:RR:CTF:ER W231514RDC  
Category: NAFTA Drawback  
JOHN B. PELLEGRINI, ESQ.

MCGUIREWOODS, LLP  
1345 Avenue of the Americas  
New York, NY 10105-0106

Re: Syngenta Crop Protection, Inc.: Request for reconsideration and proposed modification of HRL 231152 (6/13/2006); 19 U.S.C. § 3333; 19 C.F.R. § 181.45; NAFTA drawback; same condition.

DEAR MR. PELLEGRINI:

This is in response to your request on behalf of your client, Syngenta Crop Protection, Inc. (Syngenta), dated 7/20/2006, for reconsideration of our determination in HRL 231152 (6/13/2006). We have also received your correspondence dated 8/10/2006, and 4/14/2008, and have taken into consideration your comments during our teleconference on 4/7/2008. Our determination upon reconsideration of the issue is explained below.

**FACTS:**

In a 9/13/2005, ruling request, Syngenta requested that we rule that the product at issue, a liquid fungicide, was in “the same condition” within the meaning of 19 U.S.C. § 3333, when exported to Canada as when admitted to a foreign trade zone. If the fungicide is in the “same condition” it will not be subject to the NAFTA-imposed limitation on duty deferral on exportations to Canada and Mexico, i.e., such duty-deferral may be granted only on the lesser of the total duties paid or owed on the importation into the United States or the total amount of duties paid on the exported good on its subsequent importation into Canada or Mexico. In response to this request, HRL 231152 (6/13/2006), was issued. HRL 231152 concluded that the addition of propylene glycol in the FTZ to the concentrated active ingredient imparted the characteristic of “flowability” to the end product, liquid fungicide, and therefore, the exported fungicide was not in the same condition that it was when the concentrate was admitted to the FTZ. Thus, the NAFTA duty-deferral limitations applied.

The facts under consideration are these. Azoxystrobin Millbase concentrate, which is about 50% percent by weight active ingredient, will be imported in 1,000 liter tote tanks and admitted to a foreign trade zone The con-

concentrate is made up of water, a dispersant / surfactant, a preservative / anti-bacterial agent, an antifoaming agent and the active ingredient. Its CAS number is 13186033-8 and its product number is A1336D. Within the zone propylene glycol is added. In addition, a biocide and a stabilizer, i.e., bentonite are added. According to Syngenta, the propylene glycol is added to dilute the concentrate and prevent freezing and the bentonite is added "to ensure that the active ingredient remains suspended in the solution ensuring a homogenous mixture of active ingredient." This ensures that, after further dilution with water by the end users, the fungicide can be applied via spraying and at a measurable rate of delivery.

The finished fungicide is about 23% Azoxystrobin Millbase by weight. The Azoxystrobin Millbase imported in concentrated form and the finished fungicide are both classified under subheading 3808.20.15, HTSUS. The fungicide is tested, packaged and labeled in the zone, then exported to Canada. The finished exported product is named "Abound Flowable," product number A12705a. Its CAS number is 13186033-8. The concentrate is not used as a fungicide in the U.S. because it is not registered with the Environmental Protection Agency and the ingredients added in the FTZ are necessary for use because, Syngenta explains, without the ingredients added in the FTZ, the Azoxystrobin Millbase would not remain in suspension making further the dilution in the field and spraying difficult.

When Syngenta's request was first considered, in response to a request to review the material safety data sheets for the imported concentrate and the exported fungicide, the CBP Laboratory stated that, "the additional ingredients in the exported product do not change the characteristic of the active ingredient or the products. But, the addition of the propylene glycol specifically to prevent freezing does change the condition of the exported product from the imported product. Without the propylene glycol, the product could freeze and would then lose its flowable condition." Based on this determination, we stated in HRL 231152, that, [The lab] has concluded that the characteristic of active ingredient in the liquid fungicide, as imported, is not changed by the processing done in the FTZ. [The lab] has found, however, that the propylene glycol is added to liquid fungicide to prevent the freezing of the liquid. Without the addition of propylene glycol, the liquid fungicide is susceptible to freezing in the colder climate of Canada, affecting its 'flowability.' Thus the article produced as a result of the processing in the FTZ goes beyond 'mere dilution of the imported product,' . . . Given that flowability is a characteristic not found in the liquid fungicide before the addition of propylene glycol, we conclude that the addition of such to the liquid fungicide changes the condition of the liquid fungicide to the extent that it has become used. The use in this case consists of using the imported article to produce an article suitable for use as a liquid fungicide in [a] potentially freezing climate, such as Canada."

The request for reconsideration asserts that there are mistakes in the conclusions reached in HRL 231152. That is, propylene glycol has no effect on "flowability." The imported concentrate contains ingredients that effect flowability and the fungicide is not used in freezing conditions. Syngenta states that the imported active ingredient contains two wetting agents, a biocide and a surfactant and that the "flowability," i.e., the measure of the fungicide's efficient use in spraying equipment, is imparted to the fungicide by surfactants that are present in the imported active ingredient. "A surfactant, or surface active agent, is designed to reduce the surface tension

of liquids. It is the surfactants that enhance the flowability of the finished product not propylene glycol . . . .” “Storage in cold conditions is the sole reason for the addition of propylene glycol . . . .” Our research reflects that flowability is directly related to the fungicide’s efficient use in spraying equipment. When asked to reconsider the facts in this case, the CBP lab stated, “propylene glycol is an antifreeze [added to the concentrate] for long term storage.”

**ISSUE:**

Whether the imported concentrate is changed in condition by the addition of the ingredients in the zone within the meaning of 19 U.S.C. § 3333(a) such that the exported fungicide is subject to the limitation on duty deferral imposed by the NAFTA. ?

**LAW and ANALYSIS:**

Section 203 of the North American Free Trade Agreement (NAFTA) Implementation Act (Public law 103–182; 107 Stat. 2057, 2086; 19 U.S.C. § 3333), provides for the treatment of goods subject to NAFTA drawback. Section 203(a)(2) of the NAFTA Implementation Act exempts from the general duty drawback (that is, the NAFTA “lesser of” rule) and duty deferral rules of article 303 of NAFTA, merchandise which is exported to another NAFTA party in the same condition as when it was imported. See Article 303.6(b) of NAFTA, which permits full drawback of U.S. duties upon exportation to other countries, including Canada and Mexico; 19 U.S.C. § 3333(a)(2). However, antidumping and countervailing duties may not be waived, remitted nor refunded under NAFTA. See 19 U.S.C. § 3333(e); 19 C.F.R. § 181.42(a).

Under § 3333(a), a good subject to NAFTA drawback means any good other than, *inter alia*—

(2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph—

(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good

(19 U.S.C. § 3333(a)(2)). The Customs Regulations issued under the authority of the NAFTA Implementation Act (see above) specifically provide for the availability of drawback on the exportation of merchandise to a NAFTA country (for effective dates of the provisions in these regulations, see 19 C.F.R. § 181.41). Paragraph (b)(1) of § 181.45, same condition defined, provides that:

For purposes of this subpart, a reference to a good in the “same condition” includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

. . . .

(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or

(vi) Testing, marking, labeling, sorting or grading.

The exemplars in § 181.45 are permitted so long as such actions do not materially alter the characteristics of the good.

First, we conclude that the statement made in HRL 231152, that “Given that flowability is a characteristic not found in the liquid fungicide before

the addition of propylene glycol,” is not entirely correct. Flowability is a characteristic found in the imported concentrate. Second, HRL 231152 concluded that the addition of the ingredients to the Azoxystrobin Millbase changed the condition so that the exported fungicide was subject to the NAFTA-imposed limitations on drawback. We agree. While we acknowledge the similarities between the concentrate and the exported fungicide: they are classified under the same subheading, have very similar handling and data safety instructions and are assigned the same CAS numbers, among other things, the standard for use under 19 U.S.C. § 3333 and 19 C.F.R. § 181.45 is intentionally narrow. In Syngenta’s case, the addition of the ingredients in the zone does not fall into any of the exemplars in § 181.45(b)(1) and also materially alters the characteristic of the concentrate. Therefore, the exported fungicide is not in the same condition as the imported concentrate.

Syngenta asserts that the concentrate is merely diluted in the FTZ by the addition of the propylene glycol, which is permitted so long as such dilution does not alter the material characteristics of the good. The addition of the ingredients in the zone is not “mere dilution,” which, when given the common meaning, means “nothing more than” “making weaker or less concentrated.” The concentration of the active ingredient is reduced from 50% to about 23% by the addition of the other ingredients. But Syngenta states that “in order for the product to be used in spray equipment, the most common means of applying the fungicide, the ingredients added after importation are necessary” because without the ingredients added in the FTZ, the active ingredient would not remain in suspension making further dilution and spraying difficult. Thus, the “mere dilution” assertion is contradicted, i.e., something in addition to a reduction in concentration happens to the Azoxystrobin Millbase.

In HRL 231372 (5/4/2006) we determined that painting adhesive on brushing sleeves so that rubber would bond to the sleeves was a use within the meaning of § 3333(a)(2) and § 181.45(b)(1) because “the application of the adhesive paint is necessary to the further processing of the bushing sleeves.” In exactly the same way, the addition of the ingredients in the zone is necessary for the further processing of the fungicide. The added ingredients are necessary so that the fungicide may be further diluted. Thus, the addition of the ingredients to the fungicide changes its condition within the meaning of § 3333(a)(2) and § 181.45(b)(1) and is not just a change in the concentration of the active ingredient.

In HRL 555740 (5/28/1991) a herbicide was mixed with a dispersant, two wetting agents and a diluent clay to enhance the product’s water solubility so that less agitation was required for proper mixing. The herbicide, which was usable before the operations considered, was also granulated which consisted of spraying the herbicide with water, adding heat to remove the excess water and removing grains of an inconsistent size. The granulation eliminated a powdery consistency making the product easier to measure for the end user. No chemical change took place in the herbicide through the processes. The importer described the processes as making the herbicide “more user friendly.” In HRL 555740 we held that “we find that the formulation and granulation processes constitute alterations within the meaning of subheading 9802.00.50, HTSUS.”

Syngenta argues that the addition of the ingredients to the Azoxystrobin Millbase makes the fungicide “more user friendly” and cites HRL 555740 for

the proposition that the additions made by Syngenta to the fungicide “constitute something less than a substantial alteration.” In fact, HRL 555740 held that the subject herbicide was “improved in condition” and “altered.” Moreover, unlike Syngenta’s fungicide, the herbicide in HRL 555740 was usable as a herbicide before the processing that improved its condition. Thus, clearly, 555740 does not lead to the conclusion that making a product “more user friendly” is indicative that the product was not altered and it is unclear how HRL 555740 supports Syngenta’s position that the concentrate is not changed in condition or altered in the zone.

In HRL 230166 we held that the addition of silicon dioxide - an anti-caking agent which absorbs moisture and prevents powders or granules from sticking - to vegetable powder changes the condition of the vegetable powder. The vegetable powder was made of ground-up vegetables and without the silicon dioxide the powder would be “clumpy and less easily pourable” and thus, the vegetable powder was not in the same condition after the addition of the silicon dioxide. The change in the vegetable powder after the silicon dioxide was added is analogous to the change in the fungicide after the ingredients are added in the zone. The addition of the silicon dioxide made the powder stick together less and thus it was more easily poured. In the same way, the addition of the ingredients to the concentrate enable the active ingredient to remain in suspension so that further dilution and spraying is easier. Thus, the silicon dioxide changed the vegetable powder into usable, i.e., pourable form, exactly the same way that the added ingredients render the fungicide concentrate into usable, i.e., sprayable form.

Finally, CBP has considered how the manufacturer treats the good before and after the process at issue when determining whether there has been a change in condition. In HRL 228961 (1/23/2002) we considered whether indigo powder of approximately 96 percent strength was in the same condition when, after adding water, a dispersing agent and an antimicrobial agent and then passing the powder through a sand mill to reduce the size of the indigo particles, the result was a paste of approximately 42 percent concentration. In addition to other factors, we looked at the differences in the way the powder and paste were treated by the manufacturer. In that ruling we found it significant that the powder and paste were treated as different products i.e., they were described separately on the web site, the powder was packaged in cartons and the paste was is packaged in drums and the handling instructions were different. In this case, Syngenta treats the concentrate differently than it treats the fungicide. Syngenta refers to the concentrate as “Azoxystrobin Millbase,” product number A13367D and the exported product as “Abound Flowable,” product number A12705A. The Azoxystrobin Millbase is imported in 1000 liter tanks but the fungicide is packaged into different containers with different labeling. The Azoxystrobin Millbase concentrate is not used in the U.S. but the Abound Flowable is sold and used in the U.S.

Considering all the factors described above, the exported fungicide is not in the same condition within the meaning § 3333 and § 181.45 as the imported Azoxystrobin Millbase. Accordingly, the conclusion in HRL 231152 was justified and correct.

**HOLDING:**

The imported concentrate is changed in condition by the addition of the ingredients in the zone the meaning of 19 U.S.C. § 3333(a) and therefore the exported fungicide is considered “used” for purposes of the limitation on

duty deferral imposed by the NAFTA. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

William G. Rosoff for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

