

# U.S. Customs and Border Protection



## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **Ship's Store Declaration**

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

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0018.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Ship's Stores Declaration (CBP Form 1303). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

**DATES:** Written comments should be received on or before May 7, 2013, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of

the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Ship's Stores Declaration.

**OMB Number:** 1651-0018.

**Form Number:** CBP Form 1303.

**Abstract:** CBP Form 1303, Ship's Stores Declaration, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship's stores, controlled narcotic drugs, bunker coal, or bunker oil in a format that can be readily audited and checked by CBP. The form was developed as a single international standard ship's stores declaration form to replace the different forms used by various countries for the entrance and clearance of vessels. CBP Form 1303 collects information about the ship, the ports of arrival and departure, and the articles on the ship. It is pursuant to the provisions of section 432, Tariff Act of 1930 and provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85, & 4.87. This form is accessible at [http://forms.cbp.gov/pdf/CBP\\_Form\\_1303.pdf](http://forms.cbp.gov/pdf/CBP_Form_1303.pdf).

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 8,000.

**Estimated Number of Responses per Respondent:** 13.

**Estimated Number of Total Annual Responses:** 104,000.

**Estimated Total Annual Burden Hours:** 26,000.

Dated: March 5, 2013.

SETH RENKEMA,  
*Acting Agency Clearance Officer,*  
*U.S. Customs and Border Protection.*

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Andean Trade Preferences Act**

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

**ACTION:** 60-Day notice and request for comments; Extension of an existing information collection: 1651–0091.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Andean Trade Preferences. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before May 7, 2013, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval.

All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

**Title:** Andean Trade Preferences Act.

**OMB Number:** 1651-0091.

**Form Number:** CBP Forms 449 and 17.

**Abstract:** This collection of information is required to implement the duty preference provisions of the Andean Trade Preference Act (ATPA) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA). These programs involve duty-free or reduced-duty treatment of imported goods under certain rules that are provided for in these two Acts, as codified in 19 U.S.C. 3201 through 3206.

The ATPA declaration format is provided for by 19 CFR Part 10.201-10.207. The type of information collected includes the processing operations performed on articles, the material produced in a beneficiary country or in the U.S., and a description of those processing operations. CBP Form 17, Andean Trade Preference Act (ATPA) Declaration, may be used when claiming preferential treatment under ATPA. This form is accessible at: [http://forms.cbp.gov/pdf/cbp\\_form\\_17.pdf](http://forms.cbp.gov/pdf/cbp_form_17.pdf).

ATPDEA is provided for by 19 CFR 10.251-10.257. Claims under ATPDEA are submitted using CBP Form 449, Andean Trade Promotion and Drug Eradication Act (ATPDEA) Certificate of Origin. This form can be used only when claiming ATPDEA preferential treatment on the goods listed on the back of the form. CBP Form 449 is accessible at: [http://forms.cbp.gov/pdf/CBP\\_Form\\_449.pdf](http://forms.cbp.gov/pdf/CBP_Form_449.pdf).

**Current Actions:** This submission is being made to extend the expiration date with no change to information collected or to CBP Forms 449 or 17.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**ATPA Certificate of Origin:**

**Estimated Number of Respondents:** 2,133.

**Estimated Number of Annual Responses per Respondent:** 2.

**Estimated Number of Total Annual Responses:** 4,266.

**Estimated Time per Response:** 10 minutes.

**Estimated Total Annual Burden Hours:** 711.

**ATPDEA Certificate of Origin:**

**Estimated Number of Respondents:** 233.

**Estimated Number of Annual Responses per Respondent:** 7.

**Estimated Number of Total Annual Responses:** 1,631.

**Estimated Time per Response:** 30 minutes.

**Estimated Total Annual Burden Hours:** 815.

Dated: March 5, 2013.

SETH RENKEMA,  
*Acting Agency Clearance Officer,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, March 8, 2013 (78 FR 15031)]

**PROPOSED TEST METHOD FOR THE ADMINISTRATION  
OF ADDITIONAL U.S. NOTE 5 TO CHAPTER 64, HTSUS,  
CONCERNING THE CLASSIFICATION OF FOOTWEAR  
WITH TEXTILE MATERIAL ON THE OUTER SOLE**

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

**ACTION:** Notice of proposed approach to classification of footwear covered by Additional U.S. Note 5 to Chapter 64, Harmonized Tariff Schedule of the United States (“HTSUS”).

**SUMMARY:** This notice advises interested parties that U.S. Customs and Border Protection (“CBP”) proposes to adopt the following analysis to administer Additional U.S. Note 5 to Chapter 64, HTSUS (“Note 5”).

**DATES:** Written comments must be received on or before May 28, 2013.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE (10<sup>th</sup> Floor), Washington, D.C. 20229–1177. Submitted comments may be inspected at U.S. Customs and Border Protection, 90 K Street NE (10<sup>th</sup> Floor), Washington, D.C. 20002 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Greg Connor, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–0025.

## 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 to 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.

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined 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.

Footwear is classified in Chapter 64, HTSUS. Note 4(b) to Chapter 64, HTSUS, which covers footwear, states as follows:

[T]he constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails protectors or similar attachments.

CBP has previously classified certain styles of footwear featuring outer soles of rubber or plastics to which textile material has been added under heading 6405, HTSUS, which provides for “[o]ther footwear”. *See, e.g.*, Headquarters Rulings Letter (HQ) 964978, dated April 18, 2002, and HQ 965751, dated November 18, 2002.

Thereafter, the U.S. International Trade Commission (ITC) conducted an investigation pursuant to Section 1205(a) of the Omnibus

Competitiveness Act of 1988 (19 U.S.C. §3005(a)) (Investigation No. 1205–8) in response to a request from the Department of the Treasury regarding certain footwear featuring outer soles of rubber or plastics to which a layer of textile material has been added. The request stated that changes to the HTS would promote the uniform application of the Harmonized Commodity Description and Coding System Convention as well as alleviate unnecessary administrative burdens.

Taking into consideration comments received during the course of its investigation, the ITC issued its final report on Investigation 1205–8 on February 18, 2011, with the layover requirements of Section 1206(b) being satisfied on June 30, 2011. Based on the results of the ITC final report, Presidential Proclamation 8742 was issued on October 31, 2011, wherein the President of the United States proclaimed the enactment of certain modifications to the HTSUS, including the insertion of Additional Note 5 to Chapter 64 (“Note 5”), set forth in Investigation No. 1205–8. Presidential Proclamation 8742 was published in the **Federal Register** (76 FR 68271) on November 3, 2011.

Note 5 states as follows:

For the purposes of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength.

Accordingly, Note 5 provides the authoritative legal standard to be used in determining the classification of footwear with textile material on the outer soles. CBP has the responsibility of administering this standard.

### **PRELIMINARY PUBLIC COMMENTS**

By publication on the CBP website on January 23, 2012, CBP requested public comments on the best approach to administering Note 5. Specifically, CBP asked for views on subjecting relevant footwear to laboratory testing to ascertain whether the textile material on the outer sole possesses the characteristics usually required for normal use of the outer sole, including durability and strength. If laboratory testing were to be utilized, CBP requested comments on what the appropriate test would be, and how to apply it to imported footwear. Lastly, CBP requested comments on the scope of Note 5.

The eight commenters who responded to the request for preliminary comments provided a range of comments on various aspects of the administration of Note 5. These comments are summarized and discussed below:

*Comment:* One commenter questioned the need for any laboratory testing in administering Note 5, arguing that textile material applied to an otherwise complete outer sole could not possibly possess the strength and durability required for normal use of the outer sole to which it is applied. Similarly, another commenter interpreted Note 5 to create a rebuttable presumption that textile material added to outer soles did not possess the characteristics usually required for normal use of the outer sole, including strength and durability. Another commenter considered the application of textile materials to outer soles for shoes used outdoors to constitute a “circumvention of the U.S. Customs Code”, and that CBP discontinue such practices by importers with its administration of Note 5. On the other hand, another commenter opined that testing was unnecessary because of the fact that U.S. consumers purchase footwear with textile material attached to outer soles of rubber or plastics, which must mean that the textile material possesses the characteristics normally associated with an outer sole. Other commenters on the issue of whether to utilize laboratory testing in the administration of Note 5 supported doing so either directly or implicitly by proposing certain laboratory tests.

*CBP Response:* The terms of Note 5 require an inquiry as to whether textile materials added to outer soles possess the characteristics usually required for the normal use of an outer sole, including strength and durability. Therefore, we do not agree with the commenter who posited that adding such textile materials necessarily circumvents the HTSUS. With respect to the comment that the textile material should be presumed to have the characteristics associated with the normal use of an outer sole because the pertinent footwear is purchased in the marketplace, we note that a consumer’s decision to purchase footwear with textile material added to the outer sole may in fact be unrelated to the question as to whether that textile material possesses the characteristics of a true outer sole. Likewise, we do not take the view that Note 5 creates a presumption that the textile material does not possess the characteristics usually required for normal use of an outer sole. Rather, in order to apply Note 5, CBP finds that laboratory testing of footwear outer soles can lend objectivity and consistency to the determination of whether textile materials meet the terms of the note. As such, CBP proposes that such testing be utilized in appropriate cases.

*Comment:* Several commenters made the distinction between “indoor shoes” and “outdoor shoes” as it relates to the scope of Note 5, indicating that if laboratory testing is implemented, it should take into consideration the use of the shoes.



*CBP Response:* We agree with the commenters that laboratory testing may not be necessary or helpful with respect to the classification of what was referred to in the comments as “indoor shoes”, which we take to mean “house slippers” defined in Statistical Note 1(d) to Chapter 64, HTSUS. Accordingly, in the absence of evidence to the contrary, CBP proposes to presume that in general, the requirements of Note 5 are satisfied with respect to textile material on the outer sole of footwear that meets the terms of “house slippers” set forth in Statistical Note 1(d) to Chapter 64, HTSUS.

With respect to other types of footwear, Note 5 states that the standard by which the textile material should be measured is whether it possesses the characteristics “usually required for normal use of an outer sole, including strength and durability”. If the textile material is disregarded, then the constituent material of the outer sole under Note 4(b) to Chapter 64, HTSUS, will be the material to which that textile material is added. Accordingly, it stands to reason that in order to satisfy the note, textile material on outer soles must possess the characteristics, including strength and durability, normally associated with the merchandise to which it is attached. This is in accord with the majority of comments received, in which commenters suggested applying laboratory tests designed for rubber or plastics to the subject textile materials covered by Note 5.

#### *Laboratory Testing Methods Comments*

*Comment:* Two tests suggested by commenters to aid in the administration of Note 5 are American Society for Testing and Materials (ASTM) D5963, entitled “Standard Test Method for Rubber Property – Abrasion Resistance (Rotary Drum Abrader)”, and International Organization for Standardization (ISO) 4649, entitled “Rubber, vulcanized or thermoplastic – Determination of abrasion resistance using a rotating cylindrical drum device”.

*CBP Response:* We note that ASTM D5963 and ISO 4649 provide nearly identical methodologies to assess the abrasion resistance of rubber. It is particularly significant, however, that neither test includes footwear within its intended scope and field of application. Accordingly, CBP does not propose to recognize ASTM D5963 or ISO 4649 as an aid to administering Note 5.

*Comment:* Two commenters suggested that CBP use SATRA TM31a to administer Note 5. This test is a variation of the “Martindale Abrasion Test”, which is used for upholstery fabric, and requires samples to be cut from the outer soles of footwear (only for indoor

shoes or house slippers, according to one of the commenters) and rubbed across an abrasive grit paper in a variable elliptical pattern for one thousand passes.

*CBP Response:* After consulting with the CBP Office of Laboratory and Scientific Services, we conclude that this particular test carries inherent problems with repeatability between laboratories, and even operators within the same laboratory. Accordingly, the lack of precision significantly limits the utility of SATRA TM31a for the purposes of administering Note 5. Consequently, CBP does not propose to recognize SATRA TM31a in its administration of Note 5.

*Comment:* Another test raised by one commenter is ASTM D1630, entitled “Standard Test Method for Rubber Property – Abrasion Resistance (Footwear Abrader)”. This test requires an outer sole sample of a minimum of 2.5mm of thickness to be placed in the holder of the footwear abrader using 40-grit abrasive paper, at which point the number of revolutions required to abrade the sample is recorded.

*CBP Response:* We note that the section of ASTM literature pertaining to the sample preparation necessary to conduct test D1630 directs the technician to smooth any unevenness on the surface area of the samples being tested. This step renders the test impractical given the time requirements associated with such a step applied to many footwear samples. Moreover, such buffing likely would destroy the textile material that is supposed to be the subject of the test. Furthermore, like SATRA TM31a, the literature on ASTM D1630 indicates a stronger-than-acceptable likelihood for inaccurate results should the tested specimens “bounce” on the abrasive paper in the footwear abrader. Consequently, CBP also does not propose to recognize ASTM D1630 in its administration of Note 5.

*Comment:* Other commenters suggested SATRA TM174, entitled “Abrasion Resistance – Rotary Drum Method”. SATRA TM174 requires the test specimen to be weighed before and after subjection to a rotating abrasive drum. One of the commenters who suggested SATRA TM174 indicated that the test is designed to be used on outdoor shoes.

*CBP Response:* It is unclear from the available information precisely how the test results are to be interpreted and whether the test can be independently performed by CBP. As such, before rendering a final decision, CBP is open to receiving more information on SATRA TM174 in response to this notice.

### **PROPOSED ADMINISTRATION OF NOTE 5**

After considering the responses to the preliminary request for comments and further research and consideration, CBP proposes to rec-

ognize ISO 20871 in assessing the characteristics of textile material attached to outer soles. The protocol for ISO 20871 tests the performance of footwear outer soles by taking three samples from the subject outer sole and subjecting their surface areas to the specified abrading machine. The samples are weighed before and after subjecting them to the abrasion testing. In contrast to the tests referenced above, ISO 20871 is an abrasion resistance test intended for all outer soles irrespective of material. Moreover, ISO 20871 permits the application of a single test to textile material added to all types of outer soles, not merely to rubber. Results of the test are generally expressed in terms of relative mass lost.

However, CBP proposes to base the determination of whether textile material possesses the characteristics normally required for use of an outer sole on whether the textile material subjected to ISO 20871 is still present on the samples after testing. Although we concede that this is a more permissive standard than those for footwear normally subjected to ISO 20871<sup>1</sup>, employing the ISO 20871 test in this manner is an appropriate practical and efficient means to apply the standard established by Note 5 and should yield consistent results.

Accordingly, in order to demonstrate that the terms of Note 5 have been met, either as part of a request for prospective ruling under the CBP regulations (19 CFR Part 177) or in response to a request for information via CBP Form 28, importers should present independent laboratory reports applying ISO 20871 as described above. Similarly, CBP may conduct its own testing applying ISO 20871 on footwear samples when circumstances warrant.

Before finalizing this proposal, consideration will be given to any written comments timely received.

Dated: March 11, 2013

SANDRA L. BELL

*Executive Director, Regulations and Rulings  
Office of International Trade*

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<sup>1</sup> ISO 20880, entitled “Footwear – Performance requirements for components for footwear – Outsoles”, is a technical report that sets forth the acceptable performance standards for footwear subject to the ISO 20871 procedure. These performance standards consist of various figures of mass lost due to the ISO 20871 test and depend on the type of footwear being tested, ranging from general purpose sports footwear to infant footwear to fashion footwear.

