

U.S. Customs and Border Protection Rulings Program

An Informed Compliance Publication

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

NOTICE

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “**informed compliance**” and “**shared responsibility**,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of CBP, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under CBP regulations and related laws. In addition, both the trade community and CBP share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties or, in certain instances, referral for criminal enforcement.

The Office of Trade, Regulations and Rulings (RR) has been given a major role in meeting the informed compliance responsibilities of CBP. In order to provide information to the public, CBP has issued a series of informed compliance publications, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by RR’s Commercial and Trade Facilitation Division, is entitled *U.S. Customs and Border Protection Rulings Program*. It provides guidance on the administrative process involved in submitting ruling requests, requests for internal advice, requests for protest reviews, and requests to reconsider previously issued ruling letters. We hope that this material, together with seminars and increased access to CBP rulings, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under CBP’s Regulations, for example, under 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or a customs consultant.

Comments and suggestions are welcomed and should be addressed to the Executive Director, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229-1177.

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Introduction

The U.S. Customs and Border Protection (CBP) rulings program is intended to provide the international trade community with a transparent and efficient means of understanding how CBP will treat a particular import once it arrives in the United States. The purpose of this publication is to introduce and explain CBP's rulings and decisions process.

This publication is presented in a question and answer format. Sections I to VIII discuss the procedures for obtaining a binding prospective ruling from CBP. Section IX discusses who can rely on prospective rulings issued and published by CBP. Sections X to XI and XVI discuss the procedures for modifying or revoking previously issued prospective rulings and the principles of decisions on internal advice requests or protest reviews. Sections XII to XV discuss the administrative options one has when one has not received a prospective ruling and relevant goods are imported into the United States. Section XVII provides a brief overview of the means by which domestic parties may challenge CBP's treatment of a particular product. Finally, Section XVIII addresses judicial review of CBP's decisions.

For more specific information on the rulings process, see 19 C.F.R. Parts 177 and 182. See *also* 19 C.F.R. Part 174 and 175. In addition, for an overview on importing into the United States, please see the CBP document entitled *Importing into the United States: A Guide for Commercial Importers*. New importers should also review the Informed Compliance Publication on *Entry*. Links to both of these documents are available in Appendices C and G below. The Appendices to this document provide a list of other helpful links, as well as contact information.

I. What is a ruling?

A ruling is a written decision in the form of a letter issued by Regulations and Rulings (RR) pursuant to 19 C.F.R. Part 177 (or other relevant regulation) that tells the requester how CBP will treat a good or conveyance when it is imported into or arrives in the United States. In other words, the ruling letter may discuss the appropriate tariff classification, country of origin marking of the good, the country of origin for purposes of determining the duty rate of a good, etc. In order to distinguish rulings from the other types of decisions that CBP issues, we often refer to these as prospective rulings. The purpose of a prospective ruling letter is to enable the trade to make business decisions that are dependent on how their goods will be treated on importation. Once issued, a prospective ruling is a binding decision on which you as a member of the trade can rely and depend on wherever your goods are imported in the United States. It is an important trade facilitation measure. In fact, the United States and other World Trade Organization (WTO) members, who have adopted the WTO Agreement on Trade Facilitation, have committed to issuing advance rulings.

All prospective rulings are published on the Customs Rulings Online Search System (CROSS), which is available at <https://rulings.cbp.gov/home>. CBP has a legal obligation to publish these rulings. See 19 U.S.C. § 1625. The published rulings provide the international trade community with guidance on how CBP will handle similar transactions.

As of September 1, 2023, there were over 212,962 rulings available on CROSS. That number includes internal advice and protest review decisions, which will be discussed in Sections XIII through XV below.

II. Who Can Request a Prospective Ruling?

Any person or business that plans to import a particular product into the United States may request a binding ruling from CBP.¹ There are no charges or fees associated with the rulings program. If the goods that are the subject of the importer's ruling request have already arrived at a U.S. port and you want a decision from CBP Headquarters as to how CBP should properly treat the merchandise, you may request internal advice or further review of a protest. See 19 C.F.R. §§ 174.11, 177.11(b)(2). See the discussion questions related to these issues in Sections XIII-XV below.

III. What part of CBP issues prospective rulings?

RR is responsible for issuing all binding prospective rulings. RR has three divisions that issue rulings: the National Commodity Specialist Division (NCSA) and two divisions at RR's Headquarters Office. Prospective rulings issued by the NCSA are issued within 30 days of receipt of the ruling request. The following NCSA branches issue rulings:

- Machinery, Manufacturing Materials, and Petroleum Branch,
- Agricultural, Electronics, Automotive and Aerospace, and Footwear Branch,
- Textiles and Wearing Apparel, Pharmaceuticals, Health and Chemicals Branch,
- Consumer Goods and Miscellaneous Products Branch, and
- Enforcement and Trade Remedies Branch.

The NCSA issues binding prospective rulings covering:

- tariff classification,
- country of origin,
- country of origin marking, and
- preferential tariff treatment under free trade agreements (FTAs) (other than questions concerning regional value content) or special trade programs (African Growth Opportunity Act (AGOA), Andean Trade Preference Act (ATPA), etc.).

An example of a prospective ruling from the NCSA can be found in Appendix A to this document. If you have any questions about a specific ruling that is issued by the NCSA, please contact the National Import Specialist (NIS) referenced in the ruling. Contact information can be found at the end of every NCSA ruling letter.

RR Headquarters also issues prospective rulings. An example of a ruling letter issued by Headquarters can be found in Appendix B to this document. As indicated earlier, there are two divisions at the RR Headquarters Office that issue ruling letters, the Commercial

¹ 19 C.F.R. § 177.1(c) provides that any person "as an importer or exporter of merchandise, or otherwise, has a direct and demonstrable interest in the question or questions presented in the ruling request" can make a ruling request.

and Trade Facilitation Division and the Border Security and Trade Compliance Division. These two divisions have eight branches that are responsible for issuing prospective rulings. The branches are:

- Food, Textiles, and Marking Branch,
- Electronics, Machinery, Automotive, and International Nomenclature Branch,
- Chemicals, Petroleum, Metals, and Miscellaneous Articles Branch,
- Valuation and Special Programs Branch,
- Entry Process and Duty Refunds Branch,
- Cargo Security, Carriers, and Restricted Merchandise Branch,
- Intellectual Property Enforcement Branch, and
- Exclusion Order Enforcement Branch.

In addition to the subject matters on which the NCSD issues prospective rulings, the Headquarters branches also issue rulings on the following areas:

- valuation, including regional value content determinations under FTAs,
- vessels and carriers,
- restricted and prohibited merchandise,
- intellectual property (including exclusion order enforcement),
- duty drawback,
- temporary importations under bond,
- foreign trade zones,
- bonded warehouses,
- merchandise processing fees,
- government procurement under Title III, *Trade Agreements Act of 1979*, and
- entry and duty assessment procedures.

IV. How do I request a prospective ruling from CBP?

All ruling requests must be made in writing to the CBP office issuing the prospective ruling. To request a ruling, a requester must submit a valid ruling request to CBP. A valid ruling request must contain all of the information discussed in Sections IV or V below. In addition, the request must comply with all other specific requirements discussed in Section VII below. Finally, valid ruling requests cannot be hypothetical in nature. They must provide CBP with specific information on specific products that are to be imported into the United States. See 19 C.F.R. §§ 177.1 and 177.2.

All ruling requests involving tariff classification, country of origin, country of origin marking, and basic eligibility for preferential tariff treatment under a trade preference program or an FTA should be submitted to the NCSD. All other ruling requests should be sent to the RR Headquarters Office.

V. How do I request a prospective ruling from the NCSD?

Under the newly enhanced eRulings program, a requester may submit an electronic request for a binding ruling directly to the NCSD through CBP's Electronic Ruling

(eRuling) Template at <https://erulings.cbp.gov/s/>. If the transmission is successful, the requester will receive an email acknowledgement of receipt and a binding ruling control number, within one business day. Requests may also be submitted via mail, although use of the eRulings program is strongly encouraged. The mailing address is: Director, National Commodity Specialist Division, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 201 Varick Street, Suite 501, New York, New York 10014 Attn.: Binding Ruling Request.

If photographs, illustrations, sketches, schematics or any other documents are needed to support the ruling determination, they may be uploaded before the eRuling template is finally submitted. Detailed photographs or short videos of the product may be submitted in lieu of samples. Attachments must be in one of the following formats: Microsoft Word (.doc, .docx), JPEG format for pictures (.jpg), Plain text (.txt), Adobe Acrobat (.pdf), Power Point (.ppt), and GIF image format (.gif). No zip or compressed files will be permitted.

A requester may mail a sample to: Director, National Commodity Specialist Division, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 201 Varick Street, Suite 501, New York, New York 10014 Attn.: Binding Ruling Request. Samples may be submitted by mail even if the ruling request is submitted via the eRulings program.

If a transmission is received but is not in good order for one of the following reasons, it will be returned to the requester immediately upon receipt by CBP:

- The request is not a valid binding ruling request, as defined in Section IV above.
- The text or attachment file name suffix was not in an acceptable format (see file types listed above) or contained a virus warning and would not open.
- The request is for an issue other than tariff classification, country of origin, country of origin marking, or preferential tariff treatment under free trade agreements or special trade programs.
- The ruling request is a duplicate of a previous request.

A response to the request will be sent within 30 days of receipt of the prospective ruling request. If the request is in good order, the official binding ruling response, complete with an electronic signature, will be returned by email within 30 days of receipt of a valid ruling request. Likewise, if a mailed request is in good order, a paper ruling letter will be mailed to the person making the request.

Occasionally, it is necessary for the NCSD to submit samples to the CBP laboratory to determine physical properties pertinent to tariff classification or other issues. In such cases, the NCSD will send the requester a letter (electronically or by mail, as appropriate) advising of any delay due to laboratory analysis.

If there is insufficient information to issue a ruling, the NCSD may return the request and all materials submitted by the requester, along with a letter indicating what additional information is needed. See 19 C.F.R. § 177.3 on non-conforming ruling requests.

The NCSD will also not issue a ruling letter if the issue presented in the ruling request is subject to litigation or it involves a matter where CBP has issued conflicting rulings and is in the process of resolving that matter. See 19 C.F.R. § 177.7.

Finally, on occasion, the NCSD forwards a ruling request for a prospective ruling to RR Headquarters. If that happens, the NCSD will inform the requester that the case has been sent to RR Headquarters. If a request is forwarded to Headquarters, the requester can expect that a response, in the form of a letter or ruling letter, will generally be sent within 90 days from the time that RR Headquarters receives the request.

VI. How do I request a prospective ruling from Headquarters?

As discussed above, there are currently eight branches at the RR Headquarters Office that issue prospective rulings. Below is a chart detailing the rulings that each RR Headquarters Branch issues:

RR Headquarters Branch	Types of Decisions Issued
<p>Three Tariff Classification Branches (based on the type of merchandise involved):</p> <p>Food, Textiles, and Marking Branch (Harmonized Tariff Schedule of the United States (HTSUS) Chapters 1-24 and 50-67)</p> <p>Electronics, Machinery, Automotive, and International Nomenclature Branch (HTSUS Chapters 84-93)</p> <p>Chemicals, Petroleum, Metals, and Miscellaneous Articles Branch (HTSUS Chapters 25-49, 68-83 and 94-97)</p>	<p>Prospective rulings on tariff classification forwarded from the NCSD and received directly from requesters; Internal Advice Requests and Applications for Further Review of Protests on tariff classification forwarded from the Centers of Excellence and Expertise (CEEs); and Requests for Reconsideration of ruling letters on the above matters. The Food, Textiles, and Marking Branch also issues rulings on country of origin marking issues under 19 C.F.R. Parts 102 and 134 for all imported merchandise and on the rules of origin for textile and apparel products.</p>
<p>Valuation and Special Programs Branch</p>	<p>Prospective rulings on country of origin and preferential tariff treatment, and Chapter 98 special classification received directly from requesters or forwarded from the NCSD; prospective rulings on the calculation of the customs value of a good, including application of regional value content tests under FTAs; Government procurement advisory rulings and final determinations; Applications for Further Review of Protests and Internal Advice Requests forwarded from the CEEs on all of the above matters; Requests for Reconsideration of ruling letters on all of the above matters.</p>

RR Headquarters Branch	Types of Decisions Issued
Entry Process and Duty Refunds Branch	Prospective Ruling Requests on duty drawback, temporary importation under bond, foreign trade zones, bonded warehouses, right to make entry, merchandise processing fees, harbor maintenance fees, formal and informal entry procedures, duty assessment, exemptions from duty, liquidation, proof of exportation, refund procedures, and customs broker requirements; Applications for Further Review of Protests, Internal Advice Requests forwarded from the CEEs, and Requests for Reconsideration of published rulings on all of the above matters.
Cargo Security, Carriers, and Restricted Merchandise Branch	Prospective Ruling Requests on forced labor, the full range of restricted and prohibited merchandise, including drug paraphernalia and cultural property, and all the coastwise and navigation laws enforced by CBP, including coastwise restrictions on the transportation of merchandise and/or passengers by vessels, dredging, salvage, towing, and the fisheries, instruments of international traffic, insular affairs, truck, rail and air cabotage questions, harbor maintenance fees, tonnage tax and light money; Requests for Reconsideration of ruling letters on all of the above; Internal Advice Requests and Applications for Further Review of Protests on all of the above matters.
Intellectual Property Enforcement Branch	Prospective rulings on questions involving potential trademark and/or copyright infringement; Requests for Reconsideration of ruling letters on all of the above; Internal Advice Requests and Applications for Further Review of Protests in intellectual property enforcement actions.
Exclusion Order Enforcement Branch	Prospective rulings regarding the scope of exclusion orders issued by the U.S. International Trade Commission (USITC); Requests for Reconsideration of ruling letters on the above; Internal Advice Requests in appropriate circumstances.

Ruling requests involving valuation, tariff classification (if such requests are specifically filed with the RR Headquarters Office), entry (except for duty drawback), vessels or carriers, restricted or prohibited merchandise, and Government procurement should be sent by email to HQRulings@cbp.dhs.gov. The subject line needs to specify the appropriate branch, as explained above.

All requests for duty drawback rulings should be addressed to HQDrawback@cbp.dhs.gov.

All ruling requests involving intellectual property enforcement should be addressed to

HQIPRBranch@cbp.dhs.gov.

All ruling requests involving exclusion orders should be sent by email to the Exclusion Order Enforcement Branch at EOEBranch.ITC337.Rulings@cbp.dhs.gov.

If you do not have access to email and need to send a paper submission, the mailing address for the RR Headquarters Office is:

U.S. Customs and Border Protection
Regulations and Rulings
Office of Trade
Attn: (appropriate branch)
90 K Street, N.E., 10th Floor
Washington, DC 20229

On occasion, the RR Headquarters Branch tasked with deciding a particular ruling request may contact the ruling requester to request additional information. The request for additional information will normally include a requirement that the ruling requester respond within a given amount of time or the case will be administratively closed.

In certain circumstances, the RR Headquarters Branch reviewing the ruling request may reply by letter explaining why RR cannot issue a ruling in response to the request. Section V discusses situations in which the NCSD will not issue rulings. See 19 C.F.R. §§ 177.3 and 177.7.

In addition, where the ruling request demonstrates that there are conflicting ruling letters or where previously issued ruling letters do not reflect the current views of CBP, and the prior ruling has been in effect for at least 60 days, CBP is required to follow the notice and comment procedures set forth in 19 U.S.C. § 1625. In that case, the RR Headquarters Office will issue a letter to the requester explaining that previously published ruling letters, protest review decisions, or internal advice decisions may not reflect CBP's current views and must be modified or revoked. The RR Headquarters Office will then issue a notice in the weekly Customs Bulletin and Decisions (Customs Bulletin) with the proposed modification or revocation. For additional information on this process, see Sections XI and XVI on incorrect ruling letters and protest review decisions.

VII. What must be included in all prospective ruling requests sent to RR?

The following information is required for all ruling requests on prospective transactions sent to the NCSD and the RR Headquarters Office:

- The name, address, email address and phone number of the requesting party.
- The names, addresses, email addresses and other identifying information of all interested parties (if known) and the manufacturer ID code (if known).
- The name(s) of the port(s) in which the merchandise will be entered (if known).
- A description of the transaction; for example, a prospective importation of (merchandise) from (country).

- A statement that there are, to the importer's knowledge, no issues on the commodity pending before CBP or any court. In particular, this means that the importer should not request a ruling on a transaction in which the importer has protested the entry at a port. It is very important that a requester not submit a ruling request for transactions that have either been liquidated or are currently under consideration by a CBP office. For these types of transactions, the only rulings procedures available are the requests for internal advice or the applications for further review of protest decisions. See Sections XIII-XV below.
- A statement as to whether advice has been sought from a CBP office; and if so, from whom, and what advice was rendered, if any.
- Evidence that the requester believes supports the assertions made in the ruling request.

All of these requirements can be found at 19 C.F.R. §§ 177.2(a) and (b). In addition, a single ruling request may include no more than five (5) items of the same class or kind.

A requester may also indicate, in the ruling request, a desire to orally discuss the issues involved in the request. Finally, a requester may also request that CBP not disclose some of the information included in the ruling request because it contains confidential information such as trade secrets. The requester must clearly bracket or highlight the confidential information in the request and specify why that information should be kept confidential.

VIII. Is there any other information that I should include when submitting a prospective ruling request?

Yes, a person requesting a ruling should submit specific information as it relates to the type of request that is being sent to CBP. To increase the likelihood that RR can respond without having to request additional information, requesters should provide as much of the below information as possible, depending on the type of ruling required. In general, CBP recommends that requesters closely review the CBP Regulations and other pertinent references, such as the HTSUS, to determine as closely as possible the applicable law, regulation or tariff provision. This exercise will help requesters to discern what specific information CBP will need to issue a ruling.

Classification Requests

Classification rulings determine which HTSUS provisions apply to goods. The HTSUS number determines the applicable duty rate and eligibility for various trade programs. Classification depends on various factors, which vary according to the type of product involved. All classification ruling requests are to be sent to the NCSO using one of the methods discussed in Section V above and should include the following information, where applicable:

- A full and complete description of the good in its imported condition.
- Component materials.
- The good's principal use in the United States.
- The commercial, common, or technical designation.

- Illustrative literature, sketches, digital photographs, flow charts, etc.
- Chemical analysis, flow charts, CAS number, etc.
- Any special invoicing requirements in Section 141.89 of the Customs Regulations (19 C.F.R. § 141.89).
- Laboratory reports, if pertinent.
- The HTSUS provisions that the requester believes describe the good and the reason for that conclusion. In addition, the requester should include a description of the good that highlights the particular attributes that are relevant for classifying the good in a particular heading or subheading of the HTSUS. The reasoning should include citations to the Harmonized System Explanatory Notes, common dictionary definitions, or previously published rulings.
- Any other information that may assist in determining the classification of the article. We would suggest reviewing the Informed Compliance Publications which cover classification issues for various commodities. The titles and links to these documents are in Appendix D below.

For a general explanation on how to classify a commodity, we recommend that you review the Informed Compliance Publication on *Tariff Classification* (a link to the publication is in Appendix C to this document).

Country of Origin Requests

All ruling requests on the Country of Origin of a particular commodity should be sent to the NCSD using one of the methods described in Section V above. The origin of goods depends on where the various production steps took place. The following detailed information will be helpful:

- Countries where each of the source materials were made or harvested.
- Countries where each of the various production steps took place.
- A complete description of the component parts and the role that those parts play in the final product.
- For country of origin determinations using the 19 C.F.R. Part 102 marking rules, please include the classification of the component parts and the final good, in addition to the information provided above.

For more specific information on rules of origin, see the Informed Compliance Publication on *Rules of Origin* listed in Appendix C to this document. In addition, there are a number of specific Informed Compliance Publications that reference the rules of origin requirements for specific products. See Appendix E below for links to these publications.

Preferential Trade Agreement and Trade Program Requests

In addition to the source and production information needed for country of origin requests, Trade Program or Free Trade Agreement rulings may also require information on costs incurred in each of the countries where production occurs. All of these ruling requests should also be sent to the NCSD using one of the methods described in Section V above. For more specific information on the country of origin for receiving preferential tariff treatment under trade agreements or trade programs, see the Informed Compliance

Publication on *Rules of Origin*. A link to this document is available in Appendix C to this document. In addition, there are a number of specific Informed Compliance Publications that reference the rules of origin requirements for specific products. See Appendix E below for links to these publications.

Country of Origin Marking Requests

A requester may also wish to have CBP issue a binding ruling on the appropriate method or manner of marking the imported good as a good of a particular country. See 19 U.S.C. § 1304 and 19 C.F.R. § 134. All requests involving the country of origin marking of a particular commodity should be sent to the NCSO using one of the methods described in Section V above and should include:

- A detailed description of how the article and its container will be marked.
- Illustrations that show clearly how the goods are labeled and packaged.
- Illustrations that show all other labeling and packaging details, besides the actual country of origin marking.
- A detailed description of how the goods will be used or sold upon importation.

For information on marking requirements for particular commodities, see the Informed Compliance Publication on the marking of specific products listed in Appendix E below.

Valuation Requests

A prospective ruling request involving the appropriate value of merchandise to be imported into the United States should be addressed to the Valuation and Special Programs Branch of the RR Headquarters Office as discussed in Section VI above. The request should include the following information regarding the description of the transaction:

- Description of the nature of the transactions (terms of sale).
- The relationship (if any) of the parties.
- Whether the transaction was at arm's length.
- Additional required information depends on the issue presented. For example, if the issue is whether the commission paid by the buyer is a buying or selling commission, all the details and documentation pertaining to the roles of the parties and the payment of the commission would need to be submitted.

For additional information on the issues related to the customs valuation of an item, see the Informed Compliance Publications on *Customs Valuation, Determining the Acceptability of Transaction Value for Related Party Transactions, Bona Fide Sales and Sales for Exportation to the United States, Buying and Selling Commissions, Proper Deductions for Freight and Other Costs, Customs Valuation of Fresh Produce*, as well as the *Customs Valuation Encyclopedia*. Links for these documents can be found in Appendix C to this document.

Coastwise Trade, Restricted, and Prohibited Merchandise Requests

A person who intends to engage in coastwise trade within the United States may wish to

seek a binding prospective ruling to determine whether the particular transaction would violate the coastwise laws of the United States. A ruling request on a prospective transaction involving vessels and coastwise trade should be addressed to the Cargo Security, Carriers, and Restricted Merchandise Branch of the RR Headquarters Office, as described in Section VI above. All of these ruling requests should include the following information, depending on the transaction involved:

- Information on the items and/or passengers to be transported by the vessel.
- All documents supporting the facts declared in the ruling request.
- If there are numerous documents involved, a brief explanation of the documents, with particular emphasis on the relationship of the document to the overarching transaction.

Importers who seek a prospective ruling from CBP on their ability to import restricted merchandise into the United States (e.g., firearms, certain fruits and vegetables, and animal products), and also including issues related to prohibited merchandise (e.g., forced labor matters and the applicability of the Uyghur Forced Labor Prevention Act), should also address their ruling requests to the Cargo Security, Carriers, and Restricted Merchandise Branch of the RR Headquarters Office. The ruling request should include a complete description of the merchandise (including technical details or laboratory analysis), a sample, or pictures. For requests related to forced labor issues, upstream supply chain information will likely be required.

For additional information on issues involving the *Instruments of International Traffic and Customs Administrative Enforcement Process*, see the Informed Compliance Publications on those issues. The links to the documents are in Appendix C below.

Intellectual Property Enforcement Requests

All requests for rulings and decisions related to the enforcement of copyrights, trademarks and trade names should be addressed to the Intellectual Property Rights Enforcement Branch of RR Headquarters Office, as described in Section VI above. These ruling requests should include a complete description of the good (including technical details or laboratory analysis) and the intellectual property right at issue, a sample, or pictures, and should be sent to HQIPRBranch@cbp.dhs.gov.

For additional information on CBP's enforcement of intellectual property rights, please see the Informed Compliance Publication entitled *CBP Enforcement of Intellectual Property Rights* in Appendix C.

Exclusion Order Enforcement Requests

Importers or domestic industries may wish to seek a prospective ruling from CBP as to whether certain articles fall within the scope of an exclusion order that the USITC has issued under 19 U.S.C. § 1337.

Ruling requests involving an exclusion order issued by the USITC under 19 U.S.C. § 1337 should be addressed to the Exclusion Order Enforcement Branch of the RR Headquarters

Office, using the following email address: EOEBran.ch.ITC337.Rulings@cbp.dhs.gov.

If any person who, as an importer, exporter, or other interested party, has questions about what to include in such a ruling request, those questions should be submitted using the email address above before filing the ruling request.

Drawback Requests

An importer wishing to seek a binding ruling on whether it is eligible for drawback may send a ruling request to the Entry Process and Duty Refunds Branch of the RR Headquarters Office, as described in Section VI above. The request should include a complete description of the transaction, including descriptions of the commodity or commodities involved.

Temporary Importation Under Bond Requests

An importer wishing to seek a binding ruling on whether its merchandise is eligible to be temporarily imported duty-free under a bond may send a ruling request to the Entry Process and Duty Refunds Branch of the RR Headquarters Office, as described in Section VI above.

The request should include the following information:

- A description of the merchandise and information relating to the reasons why it is being imported into the United States.
- Information indicating that the merchandise to be imported is not being imported for sale or for sale on approval.
- Information on whether the merchandise will undergo further processing in the United States.

For additional information on issues related to the temporary importation under bond of merchandise, please see *Importing Into the United States*, a link to which is provided in Appendix G below. For statutory and regulatory language related to this issue, please see Subchapter XIII of Chapter 98 of the HTSUS and 19 C.F.R. §§ 10.31 to 10.40.

Foreign-Trade Zone Requests

An importer wishing to seek a binding ruling involving foreign-trade zones should send the request to the Entry Process and Duty Refunds Branch of the RR Headquarters Office, as described in Section VI above. The request should include the following information:

- A description of the proposed transaction and how a foreign-trade zone is implicated.
- The status of the foreign-trade zone.
- A description of the merchandise that is being brought into the foreign-trade zone.
- A description of what is to take place in the foreign-trade zone.
- A description of the merchandise that is to be entered into the United States after it has undergone processing in a foreign-trade zone.

For more specific information regarding foreign-trade zone entries, please see 19 U.S.C. §§ 81a-81u and 19 C.F.R. Part 146. In addition, we remind everyone that foreign-trade zones are authorized by the Foreign-Trade Zones Board (the Board) and supervised by CBP; therefore, some matters may fall under the jurisdiction of the Board and not CBP. More information about the Board's jurisdiction is available on the Board's website, <https://www.trade.gov/foreign-trade-zones-board>, and in the Board's regulations, 15 C.F.R. Part 400.

Bonded Warehouse Entry Requests

An importer that would like to ship goods to the United States and have them entered into a bonded warehouse prior to withdrawal may seek a binding prospective ruling on its proposed transaction. All requests should be sent to the Entry Process and Duty Refunds Branch at the RR Headquarters Office, as described in Section VI above. These ruling requests should include:

- The class of the warehouse involved in the proposed transaction.
- A description of the goods involved.
- A description of any processing or packaging that may occur in the warehouse.
- Any other records and documentation that are relevant to the transaction.

For additional information on bonded warehouses please see 19 U.S.C. §§ 1555-1563 and 19 C.F.R. Part 19.

Merchandise Processing Fee Exemption Requests

An importer seeking a binding ruling on whether the merchandise that it intends to import is subject to merchandise processing fees may send its request to the Entry Process and Duty Refunds Branch of the RR Headquarters Office as described in Section VI above. All ruling requests should include the following additional information:

- A description of the goods, including the tariff classification of the merchandise to be imported.
- Information to determine the country of origin of the merchandise.

For additional information please see 19 U.S.C. § 58c.

Government Procurement Matters

Foreign manufacturers; U.S. importers of merchandise which is subject of a final determination under 19 C.F.R. § 177.22(c); domestic manufacturers, producers, and wholesalers of like products; members of domestic labor unions that are employed in the manufacture, production or wholesale of like products; and trade organizations that draw a majority of their membership from domestic producers, manufacturers, and wholesalers of a like product may request an advisory ruling or final determination on the country of origin for purposes of Title III of the Trade Agreements Act of 1979 (19 U.S.C. §§ 2511-2518), regarding Government procurement. All of these requests should be addressed to the Valuation and Special Programs Branch of RR Headquarters Office as described in Section VI above.

All ruling requests should include the following additional information:

- A statement that the requester is authorized to file the request.
- A description of the good, including how it is manufactured, the costs of the component parts and where those parts are manufactured, the role of those parts in the final good, etc.
- The country or instrumentality that is purported to be the origin of the good.
- If applicable, the specific procurement for which the final determination is requested.

The submission needs to specify whether the requester seeks an advisory ruling or a final determination.

An advisory ruling is a non-binding, non-reviewable written statement, which calls attention to a well-established interpretation or principle of law relating to the country of origin, without applying it to the particular set of facts. See 19 C.F.R. § 177.22(b). An advisory ruling is not considered to be a ruling issued prior to importation under 28 U.S.C. § 1581(h).

A final determination is a binding judicially reviewable statement issued by the Executive Director, RR, in response to a written request that interprets and applies the provisions of law and regulation relating to the country of origin to a specific set of facts. A final determination may be issued to a party-at-interest prior to actual entry of the merchandise. See 19 C.F.R. § 177.22(c).

CBP will issue an advisory opinion in response to a request for a final determination if:

- The request suggests that general information, rather than a final determination, is actually being sought,
- The request is incomplete or otherwise fails to meet the requirements set forth in § 177.25(a), or
- The ruling requested cannot be issued for any other reason, and CBP believes that the general information supplied by an advisory ruling may be of some benefit to the party making the request.

CBP is limited by the language of 19 U.S.C. § 2515(b)(1) to advisory rulings and final determinations on whether an article is or would be a product of a foreign country or instrumentality designated pursuant to 19 U.S.C. § 2511(b).

For additional information regarding this issue, see the Informed Compliance Publication on *Rules of Origin*. A link to this document is in Appendix C below. For a detailed description of the rulings process on this issue see 19 C.F.R. Part 177 Subpart B.

IX. Who can rely on rulings issued by CBP?

The person receiving the ruling letter can rely on the binding prospective ruling either until the law or facts change, or until CBP modifies or revokes the ruling. Any person receiving a ruling letter is required to include a copy of the letter or otherwise indicate the ruling number in the entry documents when importing the good that is described in the letter. See 19 C.F.R. § 177.8(a)(2). Any importer that wishes to rely on a ruling letter issued to someone else should make sure that the letter has not been modified or revoked. CBP may modify or revoke previously issued ruling letters without issuing any notice or by issuing a second ruling letter if the initial ruling letter is less than 60 days old. If the binding ruling is 60 days old or more, the notice and other procedures of 19 U.S.C. § 1625 (c) will be followed. Alternatively, the ruling may also be revoked by operation of law. See 19 C.F.R. § 177.12(b) and (d) and the discussion below. The most efficient method of ensuring that you know how CBP will treat your merchandise is to obtain a binding ruling before the good arrives in the United States.

For a discussion on the modification and revocation of previously issued ruling letters see Section XI below.

X. What happens if I believe that a ruling letter issued to me is incorrect?

If you believe that a ruling letter issued to you is incorrect you have the right to appeal the ruling letter within CBP, whether it was issued by the NCSD or by the RR Headquarters Office. To seek CBP review of the decision in the previously issued ruling letter, you may send a written request to the RR Headquarters Office via email or at the address in Section VI above asking RR Headquarters to reconsider the correctness of the previously issued letter. All reconsideration requests must explain why the previously issued ruling is incorrect. In particular, in the reconsideration request, the person receiving the initial ruling should provide arguments as to why CBP's application of the law is incorrect. This analysis may also include citations to previously issued rulings on the same merchandise or transaction.

XI. What happens if CBP determines that a previously issued ruling is incorrect?

CBP, through the RR Headquarters Office, may determine that a previously issued ruling is incorrect. If this is the case, the procedure depends on how long the ruling has been in effect. If the ruling letter is less than 60 days old, CBP may simply issue a new ruling letter to the ruling recipient indicating that the previous ruling letter has been modified or revoked. The new ruling letter will be effective upon publication.

If the questioned ruling has been issued 60 or more days ago and CBP determines that this ruling must be modified or revoked, notice and comment procedures must be followed. In this case, CBP issues a notice in the weekly Customs Bulletin. The notice contains a copy of the rulings to be revoked as well as a copy of the proposed new rulings. Once a notice is published in the Customs Bulletin, CBP will then provide the public with 30 days in which to submit comments on the proposed letters. The public is encouraged to submit comments regarding the correctness of the legal analysis provided for in the proposed ruling letters.

All comments should be sent to the address provided in the Customs Bulletin notice. Once the comment period is closed, CBP will consider all the comments that were timely received and will address the concerns expressed in those comments in the final ruling letter, which is also published in the weekly Customs Bulletin. This revised or modified ruling letter will be effective 60 days after the date it is published in the Customs Bulletin.

Alternatively, based on the comments received, CBP may decide that its proposed ruling letters were incorrect and may issue a notice withdrawing the proposed modifications or revocations. CBP may also issue a notice to withdraw a proposed modification or revocation of previously published ruling letters if CBP determines based on the comments received, that the final ruling letter must be significantly changed. In that event, another notice with newly proposed ruling letters will be issued in the weekly Customs Bulletin.

As mentioned above, in certain situations, a ruling may be modified or revoked by operation of law, without any action by CBP. This occurs when a ruling is contrary to a recently issued court decision, recently enacted legislation, or a Presidential Proclamation. In these situations, notice and comment procedures do not apply. See 19 C.F.R. § 177.12(d).

XII. What happens if I have not requested a ruling but I have “treatment”?

There may be times when CBP has not issued a ruling, internal advice or a protest review decision, concerning a particular issue, but has made decisions involving that matter at one or more ports of entry so that consistent treatment has been given.

The conditions for determining whether treatment has been accorded are set out in 19 C.F.R. § 177.12(c)(i). In essence, the regulation requires an actual determination by a CBP officer that resulted in a consistently applied decision over a two-year period on a national basis. The law requires that, if CBP wishes to issue a prospective ruling, internal advice, or other decision which would have the effect of changing that treatment, it must follow the same notice and comment procedure described for modifying or revoking previously issued ruling letters. See 19 U.S.C. § 1625(c)(2).

XIII. What happens if I have not requested a prospective ruling and the goods that I have imported have arrived in the United States?

You will have two procedural options. The first option is to request that the CEE seek internal advice if the CEE disagrees with how you believe that CBP should treat the commodity. For specific procedures on internal advice see 19 C.F.R. § 177.11. The second option is to wait until the CEE has made a decision on the entry and then protest that decision and request further review of the decision should the CEE deny your protest. If you choose this latter option, you must protest and request further review of the decision within 180 days of the liquidation of the entry. For specific information on protests and protest review decisions see 19 C.F.R. Part 174.

XIV. How do I file a request for internal advice?

An importer may request that the CEE seek internal advice from the RR Headquarters

Office if the importer disagrees with the CEE concerning the application of a ruling letter issued to the importer or if the importer has not received a prior ruling but disagrees with how the CEE indicates it will treat the commodity. See 19 C.F.R. § 177.11.

A request for internal advice from an importer must be made in writing to the designated CEE. The request must include a complete description of the transaction, the applicable issues involved, the law governing the situation, and an argument for the importer's position. The importer should also include a timeline of events that gave rise to the request. Finally, the importer must include a statement that the same or similar transaction has never been considered or is not currently being reviewed by any other CBP office or CEE. See 19 C.F.R. § 177.11(b)(1)(ii).

Once the importer submits the request for internal advice to the designated CEE, the CEE will review the request and determine whether or not the CEE disagrees with the importer. If the CEE determines that there is a disagreement, the request will be forwarded to the RR Headquarters Office for review and decision.

RR Headquarters will review the request for internal advice and issue a ruling letter to the CEE explaining how the field office should treat the goods. This ruling letter will represent the official position of CBP on the application of the customs laws to the particular product. In addition, the CEE will be instructed to furnish a copy of the letter to the importer within 60 days of receipt of the ruling letter. An electronic version of the letter will also be published on CROSS.

XV. How do I file an application for further review of a protest?

The initial question that all importers must answer before filing an application for further review of a protest, is whether or not the problem that they have with the way that the CEE has treated the good is a protestable matter.

Importers may file a protest with the designated CEE on the following seven decisions of a CEE director:

- the appraised value of the merchandise;
- the classification and rate and amount of duties chargeable;
- all charges or exactions of whatever character, including the accrual of interest, within the jurisdiction of the Secretary of the Treasury;
- the exclusion of merchandise from entry or delivery under any provision of the Customs laws except a determination appealable under 19 U.S.C. § 1337;
- the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof, including the liquidation of an entry pursuant to either Section 500 or Section 504, Tariff Act of 1930, as amended;
- the refusal to pay a claim for drawback; and
- the refusal to reliquidate an entry under Section 520(d), Tariff Act of 1930, as amended.

For the precise statutory and regulatory language on which types of matters are

protestable see 19 U.S.C. § 1514 and 19 C.F.R. § 174.11.

Once you have determined that you have an issue that you can protest, you must file a formal protest electronically in the ACE Protest module or by paper submission at the port where entry was made. The online form captures the same information as the paper CBP Form 19, the standard CBP protest form (see a link to CBP Form 19 in Appendix G). The CEE will then review your protest and decide whether or not it agrees with your position. In the event that the CEE agrees with your position, it will allow the protest and liquidate the entry according to your position. If the CEE disagrees with your position, it will deny the protest and liquidate the entry.

As a means of affording review by CBP Headquarters of certain decisions of the CEEs, CBP gives importers the right to request further review of protest decisions. Further review can be requested when a protest is created or anytime thereafter before the protest is decided, and within 180 days after liquidation of the entry under protest. When you file the protest through the ACE Protest Module, you must use the ACE Protest Module to submit an application for further review. When you file the protest by paper submission and choose to use the CBP Form 19 to do so, you may fill out Section V of CBP Form 19 at the time you file the protest or you may file the request on a separate Form 19 within the time allotted to file a protest.

The application for further review should include the following general information:

- information identifying the protest to which it applies and the protesting party and its importer number;
- a statement on whether or not you have filed a request for a prospective ruling, internal advice, or a protest on the same products at a different port or CBP office, or that you have filed suit at the U.S. Court of International Trade (CIT);
- finally, the importer must include any additional factual information or additional legal arguments that are not included in the current record, especially information to support the importer's claim for further review.

See 19 C.F.R. § 174.25 for information on the procedure for requesting further review of a protest decision; See *also* ACE Protest Frequently Asked Questions, <https://www.cbp.gov/trade/programs-administration/entry-summary/protests/ace-protest-frequently-asked-questions>.

You also must provide an explanation as to why you are eligible for receiving a further review of your protest, pursuant to 19 C.F.R § 174.24. All applications for further review must explain why the initial protest decision:

- is inconsistent with a previously issued ruling;
- involves questions of law or fact that have never been ruled on by CBP or the courts;
- involves previously issued ruling letters or court decisions but the importer is providing new facts or legal arguments that were not presented to CBP or the courts at the time of the initial decision; or

- involves a question that the RR Headquarters Office refused to answer in the form of an internal advice request.

In addition to the explanation and information required to support the importer's claim that a protest merits further review, the importer should include the same information and legal arguments as are generally provided when submitting a ruling request on a prospective transaction. The RR Headquarters Office will review the importer's entire submission. RR can either deny the request for further review or grant the request and issue a substantive decision. In situations where RR decides that the importer does not have a basis for receiving further review of a protest decision, RR will issue a letter to the CEE stating that the basis for further review was not met and that the protest is being returned for the CEE's disposition of the matter. If the basis for further review has been met, a substantive decision will be sent to the appropriate CEE director. The CEE director is requested to forward that decision to the importer within 60 days of receipt of the letter from Headquarters. An electronic version of this letter must be published on CROSS.

XVI. What happens if a previously issued protest review decision or a decision on an internal advice request is incorrect?

In situations where a previously issued protest review decision or decision on an internal advice request is incorrect, CBP can modify or revoke the analysis on which the letter relies. See 19 C.F.R. § 177.12(b). CBP uses the same process that is explained in Section XI above for revoking or modifying prospective ruling letters. However, any decision to modify or revoke a published protest review decision or decision on an internal advice request will not apply to previously entered goods. Instead, in accordance with law and regulation, the modification or revocation will apply to future importations of the particular good described in the second letter.

XVII. What if I am a domestic producer of a product and I believe that the way that CBP has treated a similar imported product is incorrect?

Domestic Interested Parties may submit a written petition to CBP challenging the correctness of a previously published ruling on the classification, appraised value, or rate of duty imposed on a particular imported product. A domestic interested party can be a domestic manufacturer, producer, wholesaler; union representative of a domestic industry that manufactures a like product; or a trade association with a majority of its members being drawn from the United States that manufacture, produce, or wholesale a like product in the United States.

The domestic interested party petition needs to be itemized as to each class or kind of merchandise involved and needs to contain the following information:

- the name of the petitioner, the petitioner's principal place of business, and the fact that the petitioner is a domestic interested party;
- a statement showing that the class or kind of merchandise manufactured, produced, or sold by the petitioner which is claimed to be similar to the imported merchandise, is in fact similar, in such detail as to permit the CBP Commissioner to establish the similarity between the domestic and foreign merchandise; and

- a presentation, in detail, of the information required by 19 U.S.C. § 1516.

For additional information see 19 C.F.R. Part 175.

XVIII. What happens if I would like a court to review CBP's decision in any of the above circumstances?

You may file a complaint against the United States in the CIT. With certain limited exceptions, the CIT has exclusive jurisdiction over the decisions described in this publication. See 28 U.S.C. § 1581. The complaint must be filed within 180 days of CBP's decision to deny the protest. See 28 U.S.C. § 2636(a). A complaint challenging CBP's decision in a prospective ruling letter must be brought within two years of the issuance of the letter. See 28 U.S.C. § 2636(i). Finally, a complaint challenging CBP's decision on a domestic interested party petition must be filed within 30 days after CBP provides the information enabling the domestic interested party to contest CBP's determination. See 28 U.S.C. § 2636(b).

Conclusion

We hope that this publication has provided you with answers to questions you might have through its overview of the processes for various rulings and decisions that are issued and published by CBP.

In summary, if you plan on importing into the United States, you may wish to consider obtaining a binding ruling before the product arrives at the port so that you will know how CBP will treat the merchandise. Should you disagree with a ruling letter that you have received, you may file an administrative appeal as to that letter by sending a request for reconsideration to the RR Headquarters Office.

In addition, if you have questions about how a CEE is handling your goods, you may request that the CEE seek internal advice from the RR Headquarters Office.

Finally, if you disagree with the CEE's decision regarding your merchandise, you may protest that decision and request that the RR Headquarters Office review the CEE's decision on the protest so long as certain requirements are met. By following the suggestions above in formulating your requests, you can make the process of obtaining a ruling or other decision from CBP as problem-free as possible.

Appendices

Appendix A: Sample New York Ruling Letter

NY N330529

February 1, 2023

CLA-2-34:OT:RR:NC:N3:136

CATEGORY: Classification

TARIFF NO.: 3401.30.5000; 9903.88.03

Brian Bancroft
Noatum Logistics USA, LLC
300 Airborne Pkwy W., Ste.112
Cheektowaga, NY 14225

RE: The tariff classification of liquid hand soaps from China

Dear Mr. Bancroft:

In your ruling request dated January 26, 2023, on behalf of your client, Personal Essential Designs, LLC, you requested a tariff classification ruling on liquid hand soaps.

Your submission describes the subject products as hand soaps, packaged in festive pump bottles for various seasons and holidays. These hand soaps are intended as one-time use items. The bottles are made from PET plastic and include polypropylene pumps with metal springs. The bottles may be in the shape of pumpkins, skulls, maple leaves, trees, Christmas characters, or they may have festive designs to evoke the season/holiday. The bottles dispense hand-cleaning solution, employing a manual pump. The provided spreadsheet indicates that the majority of the bottles contain 16.9 fluid ounces of liquid hand soap. The hand soap ingredients include water, sodium laureth sulfate, cocamidopropyl betaine, sodium chloride, cocamide mea, acrylic acid/acylamidomethyl propane sulfonic acid copolymer, fragrance, benzyl alcohol, phenoxyethanol, and benzoic acid.

The bottles are filled with hand soap at the time of import and are suitable for retail sale. Pursuant to General Note 5 (a), Harmonized Tariff Schedule of the United States (HTSUS), the bottles will be classified as containers for the sand soap.

The applicable subheading for the liquid hand soaps will be 3401.30.5000, HTSUS, which provides for Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap: Other. The general rate of duty will be free.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 3401.30.5000, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 3401.30.5000, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions> and <https://www.cbp.gov/trade/remedies/301-certain-products-china>, respectively.

This merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at www.fda.gov.

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 at <https://hts.usitc.gov/current>

This ruling is being issued under the provisions of Part 177 of the Customs and Border Protection Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Nuccio Fera at nuccio.fera@cbp.dhs.gov.

Sincerely,

Steven A. Mack
Director
National Commodity Specialist Division

Appendix B: Example of a Headquarters Ruling Letter:

HQ H328211

January 9, 2023

CLA-2 OT:RR:CTF:EMAIN H328211 ALS

CATEGORY: Classification

TARIFF NO.: 8539.21.40

George Tuttle III, Esq.
Law Offices of George R. Tuttle, A.P.C.
3950 Civic Center Drive, Suite 310
San Rafael, California 94903

RE: Ruling request; Tariff classification of a certain Tungsten Halogen Lamp

Dear Mr. Tuttle:

This letter is in reply to your request for a ruling pursuant to 19 CFR 177.2 on behalf of Applied Materials, Inc. (also referred to herein as “AMI”) on October 31, 2022. Our reply is set forth below.

FACTS:

The product at issue is identified as Tungsten Halogen Lamp (also referred to herein as “THL”), P/N 0190-39351. Based on the specification information provided, the THL consists of two pins attached to the porcelain base, and a glass envelope containing filaments and halogen. The lamp has a power rating of 2 kilowatts + 120 watts with a voltage of 120 volts.

The Applied Centura Epi system, in which the subject THL is stated to be used, is a single-wafer, multi-chamber epitaxial silicon deposition machine. The radiantly heated process chamber controls deposition conditions. You state that the “Centura ACP” performs an epitaxial process by which a thin layer of single-crystal material is deposited on a single-crystal substrate (crystalline solid in which atoms are arranged following a specific pattern throughout the entire piece of material). Epitaxial growth occurs in such a way that the crystallographic structure of the substrate is reproduced in the growing material. The process chamber is radiantly heated by these lamps, which are mounted in upper and lower lamp modules.

Each THL used in EPI Centura ACP chambers has a metal conductor foil that connects the power leads in the lamp’s porcelain base to the tungsten filament leads which extend into the lamp’s halogen-pressurized quartz bulb. You state that the THL is

manufactured to Applied's design specifications and is designed solely for use in the EPI Centura ACP process chamber.

ISSUE:

Is the Tungsten Halogen Lamp, P/N 0190-39351, as described above, properly classified under heading 8486, HTSUS, which provides for Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in note 11(C) to this chapter; parts and accessories: Parts and accessories...", or heading 8539, HTSUS, which provides for "Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; light-emitting diode (LED) light sources; parts thereof: Other filament lamps, excluding ultraviolet or infrared lamps: Tungsten halogen: Other...?"

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation ("GRI") and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation ("ARI"). GRI 1 provides that the classification of goods shall be "determined according to the terms of the headings 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, GRIs 2 through 6 may be applied in order.

The following headings and subheadings of the HTSUS are under consideration in this case:

8486 Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus
8486.20.00 Machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits...

8539 Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; light-emitting diode (LED) light sources; parts thereof:

Other filament lamps, excluding ultraviolet or infrared lamps:

8539.21 Tungsten halogen:

8539.21.40 Other...

Note 2 to Section XVI, HTSUS, which covers chapters 84 and 85, provides, in pertinent part:

2. Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546

or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517....

Note 11(D) to Chapter 84, HTSUS, provides the following:

Subject to Note 1 to Section XVI and Note 1 to Chapter 84, machines and apparatus answering to the description in heading 8486 are to be classified in that heading and in no other heading of the tariff schedule.

There is no dispute that the subject merchandise is a “part” under the HTSUS. However, you suggest that the subject THL is properly classified under heading 8486, HTSUS, per Note 2(b) to Section XVI because Note 11(D) to Chapter 84 indicates that “machines and apparatus” falling under the scope of heading 8486, HTSUS, should be classified under heading 8486 and in no other heading in the tariff schedule. On this point, we find that Note 11 to Chapter 84 does not control the classification of “parts”, because the subject THL is not a “machine or apparatus answering to the description in heading 8486”. As such, Note 11(D) does not apply to this case, and we are required to follow Note 2 to Section XVI. This approach is consistent with Nidec Corp. v. United States, 861 F. Supp. 136 (CIT 1994), aff’d, 68 F.3d 1333 (Fed. Cir. 1995), in which the Court of International Trade held that a part, which in itself constitutes an article covered by a heading of Section XVI, HTSUS, is in all cases classified as such even though it also could be classified as part of a specific machine.

The instant THL operates as an electrical filament lamp, intended to be installed in an array as a heating component for the EPI Centura ACP process chamber. Upon review, we find that the THL is specifically described under heading 8539, HTSUS, as an “electrical filament... lamp”. As such, Note 2(a), supra, is applicable in this case, and the THL is properly classified under heading 8539 as an electrical filament lamp. It is specifically classified under subheading 8539.21.40, HTSUS, as an electrical filament tungsten halogen lamp. Because the merchandise is properly classified pursuant to Note 2(a), there is no need to assess whether the subject THL is prima facie classifiable under heading 8486, HTSUS, as a part of a machine or apparatus of a kind used solely or principally for the manufacture of semiconductor devices per Note 2(b) to Section XVI.

HOLDING:

By application of GRI 1 (Note 2(a) to Section XVI), the Tungsten Halogen Lamp, P/N 0190-39351, is classified under heading 8539, HTSUS. By application of GRI 6, it is classified under subheading 8539.21.40, HTSUS. The general column one rate of duty for merchandise classified in this subheading is 2.6%.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

Sincerely,

Gregory Connor, Chief
Electronics, Machinery, Automotive, and
International Nomenclature Branch

Appendix C: Specifically Mentioned Informed Compliance Publications

Entry:

<https://www.cbp.gov/document/guidance/entry>

Tariff Classification:

<https://www.cbp.gov/document/publications/tariff-classification>

Rules of Origin:

<https://www.cbp.gov/document/publications/rules-origin>

Customs Value:

<https://www.cbp.gov/document/publications/customs-value>

Customs Valuation Encyclopedia:

<https://www.cbp.gov/document/guidance/customs-valuation-encyclopedia-1980-2021>

Bona Fide Sales and Sales for Exportation to the United States:

<https://www.cbp.gov/document/publications/bona-fide-sales-sales-exportation-united-states>

Buying and Selling Commissions:

<https://www.cbp.gov/document/publications/buying-selling-commissions>

Determining the Acceptability of Transaction Value for Related Party Transactions:

<https://www.cbp.gov/document/guidance/determining-acceptability-transaction-value-related-party-transactions>

Proper Deductions for Freight and Other Costs:

<https://www.cbp.gov/document/publications/proper-deductions-freight-other-costs>

Instruments of International Traffic:

<https://www.cbp.gov/document/guidance/instruments-international-traffic>

Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures and Liquidated Damages:

<https://www.cbp.gov/document/guidance/customs-administrative-enforcement-process-fines-penalties-forfeitures-and>

CBP Enforcement of Intellectual Property Rights:

<https://www.cbp.gov/document/publications/cbp-enforcement-intellectual-property-rights>

Appendix D: Informed Compliance Publications on the Tariff Classification of Specific Products

Agglomerated Stone:

<https://www.cbp.gov/document/guidance/agglomerated-stone>

Articles of Wax, Artificial Stone and Jewelry:

<https://www.cbp.gov/document/publications/articles-wax-artificial-stone-and-jewelry>

Base Metal Mountings and Fittings:

<https://www.cbp.gov/document/guidance/base-metal-mountings-and-fittings>

Basic Forms of Non-Ferrous Metals:

<https://www.cbp.gov/document/publications/basic-forms-non-ferrous-metals>

Beauty and Skin Care Products of Heading 3304:

<https://www.cbp.gov/document/guidance/beauty-and-skin-care-products-heading-3304>

Button, Snap Fasteners, Slide Fasteners and Similar Articles:

<https://www.cbp.gov/document/publications/button-snap-fasteners-slide-fasteners-and-similar-articles>

Cane and Beet Sugar (Quota, Classification & Entry):

<https://www.cbp.gov/document/publications/cane-and-beet-sugar-quota-classification-entry>

Caviar:

<https://www.cbp.gov/document/publications/caviar>

Classification: Apparel Terminology under the HTSUS:

<https://www.cbp.gov/document/publications/classification-apparel-terminology-under-htsus>

Classification and Entry Requirements of Alcoholic Beverages and Spirits:

<https://www.cbp.gov/document/guidance/classification-and-entry-requirements-alcoholic-beverages-and-spirits>

Classification and Marking of Pipe Fittings under Heading 7307:

<https://www.cbp.gov/document/publications/classification-and-marking-pipe-fittings-under-heading-7307>

Classification and Marking of Watches and Clocks:

<https://www.cbp.gov/document/publications/classification-and-marking-watches-and-clocks>

Classification and Quota Status of Raw Cotton under the HTSUS:

<https://www.cbp.gov/document/publications/classification-and-quota-status-raw-cotton-under-htsus>

Classification of Children's Apparel:

<https://www.cbp.gov/document/publications/classification-childrens-apparel>

Classification of Coated and Water Resistant Apparel:

<https://www.cbp.gov/document/publications/classification-coated-and-water-resistant-apparel>

Classification of Cooking Ranges, Stoves and Ovens:

<https://www.cbp.gov/document/guidance/classification-cooking-ranges-stoves-and-ovens>

Classification of Hats and Other Headgear under the HTSUS Heading 6505:

<https://www.cbp.gov/document/publications/classification-hats-and-other-headgear-under-htsus-heading-6505>

Classification of Knit to Shape Apparel Garments under HTSUS Heading 6110:

<https://www.cbp.gov/document/guidance/classification-knit-shape-apparel-garments-under-htsus-heading-6110>

Classification of Molds and Their Parts under the HTSUS:

<https://www.cbp.gov/document/publications/classification-molds-and-their-parts-under-htsus>

Classification of Ribbons & Trimmings under the HTSUS:

<https://www.cbp.gov/document/publications/classification-ribbons-trimmings-under-htsus>

Classification of Sets:

<https://www.cbp.gov/document/publications/classification-sets>

Classification of Textile Costumes under the HTSUS:

<https://www.cbp.gov/document/guidance/classification-textile-costumes-under-htsus>

Coated Nonalloy Flat-Rolled Steel:

<https://www.cbp.gov/document/publications/coated-non-alloy-flat-rolled-steel>

Coffee:

<https://www.cbp.gov/document/guidance/coffee>

Colored Bubble Glass (and Other Special Types of Glassware):

<https://www.cbp.gov/document/guidance/colored-bubble-glass-and-other-special-types-glassware>

Cutlery of Headings 8211 through 8215 of the Harmonized Tariff Schedule of the United States:

<https://www.cbp.gov/document/publications/cutlery-headings-8211-through-8215-harmonized-tariff-schedule-united-states>

Decals, Decorative Stickers and Window Clings:

<https://www.cbp.gov/document/guidance/decals-decorative-stickers-and-window-clings>

Decorative Glassware:

<https://www.cbp.gov/document/guidance/decorative-glassware>

Diodes, Transistors & Similar Semiconductor Devices:

<https://www.cbp.gov/document/guidance/diodes-transistors-similar-semiconductor-devices>

Eyewear Frames and Eyewear:

<https://www.cbp.gov/document/guidance/eyewear-frames-and-eyewear>

Fasteners of Heading 7318:

<https://www.cbp.gov/document/guidance/fasteners-heading-7318>

Fibers & Yarns Construction and Classification under the HTSUS:

<https://www.cbp.gov/document/guidance/fibers-yarns-construction-and-classification-under-htsus>

Footwear:

<https://www.cbp.gov/document/guidance/footwear>

Gaskets:

<https://www.cbp.gov/document/guidance/gaskets>

Gloves, Mittens & Mitts, Not Knitted or Crocheted, Under the HTSUS:

<https://www.cbp.gov/document/guidance/gloves-mittens-mitts-not-knitted-or-crocheted-under-htsus>

Granite:

<https://www.cbp.gov/document/publications/granite>

Hand Tool Sets Classified Within Subheadings 8205.90 and 8206.00:

<https://www.cbp.gov/document/guidance/hand-tool-sets-classified-within-subheadings-82059000-and-82060000>

Internal Combustion Piston Engines:

<https://www.cbp.gov/document/publications/internal-combustion-piston-engines>

Locks of Base Metal:

<https://www.cbp.gov/document/guidance/locks-base-metal>

Machine Tools:

<https://www.cbp.gov/document/guidance/machine-tools>

Mushrooms:

<https://www.cbp.gov/document/publications/mushrooms>

New Decisions on Candle Holders v. Decorative Glass Articles:

<https://www.cbp.gov/document/publications/informed-compliance-publication-new-decisions-candle-holders-v-decorative>

Peanuts and their Classification under the HTSUS:

<https://www.cbp.gov/document/publications/peanuts-and-their-classification-under-htsus>

Classification and Quota Status of Raw Cotton under the HTSUS:

<https://www.cbp.gov/document/publications/classification-and-quota-status-raw-cotton-under-htsus>

Soldering and Welding Machines and Apparatus:

<https://www.cbp.gov/document/publications/soldering-and-welding-machines-and-apparatus>

Stranded Wire, Rope and Cable, of Iron or Steel:

<https://www.cbp.gov/document/publications/stranded-wire-rope-and-cable-iron-or-steel>

Table and Kitchen Glassware:

<https://www.cbp.gov/document/publications/table-and-kitchen-glassware>

Tableware, Kitchenware, Other Household Articles and Toilet Articles of Plastics:

<https://www.cbp.gov/document/publications/tableware-kitchenware-other-household-articles-and-toilet-articles-plastics>

Classification of Textile Costumes under the HTSUS:

<https://www.cbp.gov/document/guidance/classification-textile-costumes-under-htsus>

Tractors (HTSUS 8701) vs. Heavy Industrial Machinery (HTSUS 8429 & 8430):

<https://www.cbp.gov/document/publications/tractors-htsus-8701-vs-heavy-industrial-machinery-htsus-8429-8430>

Turbojets, Turbopropellers and Other Gas Turbines, (HTSUS 8411) and Parts Thereof:
<https://www.cbp.gov/document/publications/turbojets-turbopropellers-and-other-gas-turbines-htsus-8411-and-parts-thereof>

Vehicles, Parts and Accessories:
<https://www.cbp.gov/document/publications/vehicles-parts-and-accessories>

Vending Machines and Their Parts under the HTSUS:
<https://www.cbp.gov/document/publications/vending-machines-and-their-parts-under-htsus>

Wadding, Gauze, Bandages & Similar Articles (HTSUS 3005):
<https://www.cbp.gov/document/publications/wadding-gauze-bandages-similar-articles-htsus-3005>

Waste & Scrap as it Relates to Base Metals of Chapter 81:
<https://www.cbp.gov/document/publications/waste-scrap-it-relates-base-metals-chapter-81>

Works of Art, Collector's Pieces, Antiques, and Other Cultural Property:
<https://www.cbp.gov/document/publications/works-art-collectors-pieces-antiques-and-other-cultural-property>

Appendix E: Informed Compliance Publications on Rules of Origin for Marking and Preferential Tariff Treatment

African Growth and Opportunity Act:

<https://www.cbp.gov/document/guidance/african-growth-and-opportunity-act>

Country of Origin of Knit to Shape Apparel Products:

<https://www.cbp.gov/document/guidance/country-origin-knit-shape-apparel-products>

Foreign Assembly of U.S. Components:

<https://www.cbp.gov/document/guidance/foreign-assembly-us-components>

Marking Requirements for Wearing Apparel:

<https://www.cbp.gov/document/publications/marketing-requirements-wearing-apparel>

Marking of Country of Origin on U.S. Imports:

<https://www.cbp.gov/document/publications/informed-compliance-publication-marking-country-origin-us-imports>

Textile & Apparel Rules of Origin:

<https://www.cbp.gov/document/publications/textile-apparel-rules-origin>

U.S. Caribbean Basin Trade Partnership Act:

<https://www.cbp.gov/document/publications/us-caribbean-basin-trade-partnership-act>

Appendix F: Helpful Telephone Numbers

Regulations and Rulings Headquarters Mainline: 202-325-0100

National Commodity Specialist Division Mainline: 646-733-3000

Appendix G: Helpful Links

CBP website:
www.cbp.gov

Importing into the United States: A Guide for Commercial Importers:
<https://www.cbp.gov/document/publications/importing-united-states>

CROSS:
<https://rulings.cbp.gov>

Informed Compliance Main Page:
<https://www.cbp.gov/trade/rulings/informed-compliance-publications>

CBP Weekly Bulletin and Decisions:
<https://www.cbp.gov/trade/rulings/bulletin-decisions>

E-ruling Requests:
<https://erulings.cbp.gov/s/>

CBP Forms:
<https://www.cbp.gov/newsroom/publications/forms>

CBP Form 19:
https://www.cbp.gov/newsroom/publications/forms?title_1=19

Tips for New Importers and Exporters:
<https://www.cbp.gov/trade/basic-import-export/importer-exporter-tips>

ADDITIONAL INFORMATION

The Internet

The home page of CBP on the internet at <https://www.cbp.gov> provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information—which includes proposed regulations, news releases, publications and notices, etc.—that can be searched, read online, printed or downloaded to your personal computer. The website was established as a trade-friendly mechanism to assist the importing and exporting community. The website also links to the home pages of many other agencies whose importing or exporting regulations CBP helps to enforce. The website also contains a wealth of information of interest to a broader public than the trade community. For instance, the “Know Before You Go” publication and traveler awareness campaign at <https://www.cbp.gov/travel/us-citizens/know-before-you-go> are designed to help educate international travelers.

CBP Regulations

The current edition of CBP Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, via the internet, phone, fax, postal mail, or email. Internet: <https://bookstore.gpo.gov>. Phone: DC Metro Area: (202) 512-1800, Toll-Free: (866) 512-1800, Monday through Friday, 8 a.m. – 4:30 p.m. EST, Fax: (202) 512-2104. Mail: U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000. Email: Contactcenter@gpo.gov. A bound edition of Title 19, Code of Federal Regulations, is also available for sale from the same address. An electronic version of the Code of Federal Regulations is available online at <https://www.ecfr.gov/>. All proposed and final regulations are published in the *Federal Register*, which is published daily on business days by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about online access to the *Federal Register* may be obtained by calling (202) 512-1530 between 8 a.m. and 4:30 p.m. EST. The *Federal Register* is available online at <https://www.govinfo.gov>. CBP-related notices are also published in the weekly Customs Bulletin and Decisions (Customs Bulletin) described below.

Customs Bulletin

The Customs Bulletin is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. The Customs Bulletin is available online at <https://www.cbp.gov/document/bulletins>.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of **Importing into the United States** contains material explaining the requirements of the Customs Modernization Act. The Mod Act fundamentally altered the relationship between importers and CBP by

shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled “Informed Compliance.” A key component of informed compliance is the shared responsibility between CBP and the importing community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to the importation. An online version is available at <https://www.cbp.gov/document/publications/importing-united-states>.

Informed Compliance Publications

CBP has prepared a number of Informed Compliance Publications in the “*What Every Member of the Trade Community Should Know About: ...*” series. Check the website, <https://www.cbp.gov/trade/rulings/informed-compliance-publications>, for current publications.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or other applicable sections, or obtain advice from an expert (such as a licensed customs broker, an attorney or a customs consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Other Sources

Additional information may also be obtained from CBP’s ports of entry and Centers of Excellence and Expertise. Contact information for ports of entry can be found on the internet at <https://www.cbp.gov/contact/ports>, and for the Centers of Excellence and Expertise (CEEs) at <https://www.cbp.gov/trade/centers-excellence-and-expertise-information/cee-directory>.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT



Visit our website: <https://www.cbp.gov>

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