



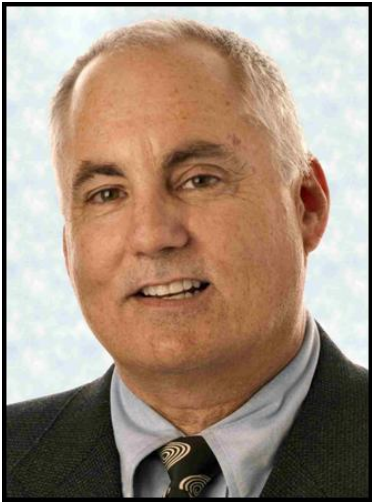
PROFESSIONAL ASSOCIATION
of Exporters and Importers



Import Compliance Boot Camp Webinar-- Session 2: More Basics

BY
GEORGE R. TUTTLE, III
GEORGE R. TUTTLE LAW OFFICES
E-MAIL: GEO@TUTTLELAW.COM
PHONE (415) 986-8780
FAX (415) 986-0908

About your Speaker



George Tuttle, III is an attorney with the law firm of George R Tuttle Law Offices in San Francisco. He has been in practice for over 30 years. George's practice emphasis is on Customs, international trade regulation, and export compliance. He works with both small and large importers, as well as customs brokers and freight forwarders on import and export related matters.

He assists companies with compliance audits and to develop effective compliance programs; determine correct customs duties, values, product classifications, and duty preference eligibility; obtain rulings, file protests; and resolve penalty, seizure and enforcement cases.

Recently, he was an editor and a principal author for Chapter 9 "Focused Assessments" – of the American Bar Association's publication U.S. Customs Law: A Practitioner's Guide. He has also contributed materials for the ABA's annual publication Customs Law Committee Year in Review for 2013, 2014 and 2015.

He and the firm also litigate matters before the United States Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC) in Washington D.C., on customs matters such as classification and valuation.

Additional information about Mr. Tuttle can be found at www.tuttlelaw.com.



Session II Agenda

- Tariff Classification and Classification Management
- Country of Origin/ Marking Requirements
- Challenging CBP decisions: Rulings, Protests and AD/CVD Scope Requests



Concept of Reasonable Care

- 19 U.S. Code § 1484 - Entry of merchandise
- The “importer of record” ... either in person or by agent, shall, using reasonable care—
 - (A) make entry by filing such . . . information as necessary to enable CBP to determine whether the merchandise may be released from [CBP] custody;
 - (B) by filing with CBP the declared value, classification and rate of duty applicable to the merchandise, and such other documentation as necessary to enable [CBP] to—
 - (i) properly assess duties on the merchandise,
 - (ii) collect accurate statistics with respect to the merchandise, and
 - (iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

Tariff Classification and Classification Management



- Goods are classified according to the provisions of the Harmonized Tariff Schedules of the United States (HTSUS)
 - The HTSUS is published annually by the International Trade Commission, with periodic updates during the year.
 - The HTSUS can be accessed from the following web sites:
 - <https://www.cbp.gov/trade/rulings>
 - <https://www.usitc.gov/tata/hts/bychapter/index.htm>



[Home](#) » [Official Harmonized Tariff Schedule 2016](#)

Tariff Assistance

Search the current Harmonized Tariff Schedule...



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Research Tools

- [HTS Archive](#)
- [U.S. Classification](#)
- [Rulings \(Customs and Border Protection\)](#)
- [Non-Tariff Duty Information](#)
- [DataWeb](#)
- [Tariff Database](#)

::Official Harmonized Tariff Schedule 2016

This supplement edition of the 2016 Harmonized Tariff Schedule takes effect July 1, 2016.

This page consists of the most recent online versions of the Harmonized Tariff Schedule, which may be an updated version of the last printed publication. Usually, the links provided will be either to the basic annual edition or its supplement(s), although there are intermediate electronic revisions that may be available. The USITC (Office of Tariff Affairs and Trade Agreements) is responsible for publishing the Harmonized Tariff Schedule of the United States Annotated (HTSA). The HTSA provides the applicable tariff rates and statistical categories for all merchandise imported into the United States; it is based on the international Harmonized System, the global system of nomenclature that is used to describe most world trade in goods. Although the USITC publishes and maintains the HTSA in its various forms, Customs and Border Protection is the only agency that can provide legally binding advice or rulings on classification of imports. Contact your nearest Customs office with questions about how potential imports should be classified. For a binding ruling on classification, contact the Bureau of Customs and Border Protection. The Harmonized Tariff Schedule is available from the Government Publishing Office in hardcopy form. If you would like to order a subscription to the latest printed edition, the 2015 HTS can be ordered from <http://bookstore.gpo.gov>.

[2016 HTSA Supplement Edition \(effective 2016-07-01\)](#)


[2016 HTSA Supplement Edition -- by chapter](#)

[2016 HTSA Basic Edition -- by chapter](#)

For tariff information from previous years, please visit the [HTSA Archive](#) page.



Cover

 **Change Record** (The record of legal and statistical changes in this edition of the Harmonized Tariff Schedule)






 **Preface**

 **General Notes; General Rules of Interpretation; General Explanatory Notes**

 **Notice to Exporters**





Section I:

Live Animals; Animal Products

-  **Chapter 1** Live animals
-  **Chapter 2** Meat and edible meat offal
-  **Chapter 3** Fish and crustaceans, molluscs and other aquatic invertebrates
-  **Chapter 4** Dairy produce; birds' eggs; natural honey; edible preparations of honey
-  **Chapter 5** Products of animal origin, not elsewhere specified













Section II:

Vegetable Products

-  **Chapter 6** Live trees and other plants; bulbs, roots and tubers
-  **Chapter 7** Edible vegetables and certain roots and tubers
-  **Chapter 8** Edible fruit and nuts; peel of citrus fruit or melons
-  **Chapter 9** Coffee, tea, maté and spices



Section XV:

Base Metals and Articles of Base Metal

-  **Chapter 72** Iron and steel
-  **Chapter 73** Articles of iron or steel
-  **Chapter 74** Copper and articles thereof
-  **Chapter 75** Nickel and articles thereof
-  **Chapter 76** Aluminum and articles thereof
-  **Chapter 77** (Reserved for possible future use)
-  **Chapter 78** Lead and articles thereof
-  **Chapter 79** Zinc and articles thereof
-  **Chapter 80** Tin and articles thereof
-  **Chapter 81** Other base metals; cermets; articles thereof
-  **Chapter 82** Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal
-  **Chapter 83** Miscellaneous articles of base metal

Section XVI:

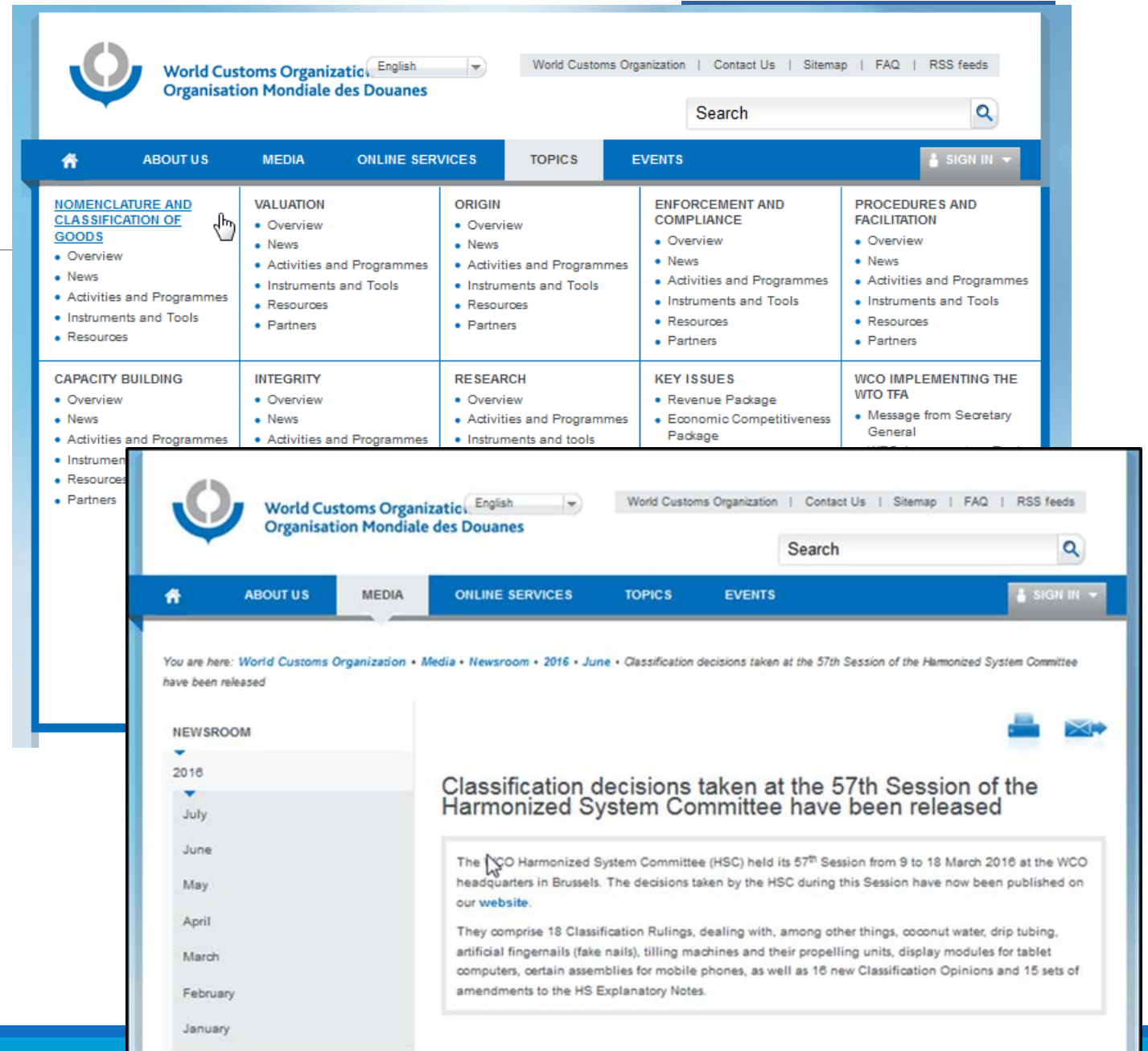
Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducing Apparatus

-  **Chapter 84** Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof
-  **Chapter 85** Electrical machinery and equipment and parts thereof; sound recorders and reproducing apparatus

Section XVII:

The HTS

- The HTSUS was originally adopted and ratified by Congress in 1989.
- It is based on the World Customs Organization's (WCO) Harmonized Classification and Coding System.
- You can visit the WCO by going to:
- <http://www.wcoomd.org>



Aids To Tariff Classification



➤ Explanatory Notes To Harmonized System

- The **Explanatory Notes** constitute the official interpretation of the Harmonized Tariff Schedule (HTS) at the international level
- Although not dispositive or legally binding on Customs or Courts, the EN's provide a commentary on the scope of each heading of the HTS and are generally indicative of the proper interpretation of the headings.

The screenshot displays the World Customs Organization (WCO) website. The header includes the WCO logo, the text 'World Customs Organization / Organisation Mondiale des Douanes', a language dropdown set to 'English', and links for 'World Customs Organization', 'Contact Us', 'Sitemap', 'FAQ', and 'RSS feeds'. A search bar is also present. The main navigation bar contains links for 'ABOUT US', 'MEDIA', 'ONLINE SERVICES', 'TOPICS', and 'EVENTS', along with a 'SIGN IN' button. The breadcrumb trail reads: 'You are here: World Customs Organization • Topics • Instruments and Tools • Classification Decisions • Classification Decisions'. The left sidebar, titled 'NOMENCLATURE AND CLASSIFICATION OF GOODS', lists various resources including 'Overview', 'News', 'Activities and Programmes', 'Instruments and Tools' (with sub-links for HS Convention, HS Nomenclature 2017 Edition, HS Nomenclature 2012 Edition, HS Nomenclature older edition, Recommendations Related to the Harmonized System, and Classification Decisions), and 'Classification Decisions'. The main content area is titled 'Classification Decisions - latest Session of the HS Committee'. It contains a paragraph stating: 'Below are the decisions taken at the last Session of the Harmonized System Committee (57th Session) in March 2016 : the Classification Rulings, the Amendments to the Explanatory Notes and to the Compendium of Classification Opinions.' Below this, a 'DOWNLOADS' section lists four documents with download icons and file sizes: 'Classification Rulings – HS Committee 57th Session | pdf | 349.7 KB', 'Addendum Classification Rulings – HS Committee 57th Session | pdf | 8.7 KB', 'Amendments to the Compendium of Classification Opinions – HS Committee 57th Session | pdf | 263 KB', and 'Amendments to the Explanatory Notes – HS Committee 57th Session | pdf | 161.5 KB'. A 'More information' button and icons for printing and email are also visible.



Organization of the HTSUS

- HTS is divided into 22 Sections and 99 Chapters
- Chapters 1 through 97 are for merchandise
- Special Classification Provisions are provided for in Chapter 98
- Temporary legislation and modifications of duty rates (Chapter 99)
- General Rules for Interpretation
 - Additional U.S. Rules Of Interpretation
- General Notes
 - Definitions (Defines Customs Territory of the United States)
 - Eligibility for Special Trade Preference Programs (NAFTA, GSP, CBI, etc.)
 - Notice to Exporters on use of HTS for export classifications

Organization of the HTSUS: Sections, Chapters, and Headings

- Each chapter is divided into various four digit headings:
- Each Heading is divided into various six digit subheadings
- Each subheading may be divided into several more subdivisions, down to a 10 digit statistical number

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity
8544		Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors	
8544.11.00		Winding wire: Of copper	3.
	20 30	33 AWG (0.18 mm in diameter) and finer 22 AWG (0.643 mm in diameter) and finer but larger than 33 AWG (0.18 mm in diameter)	kg

4 Digit heading

6-8 Digit subheading

Statistical Classification Number

- Each Section is preceded by legal notes that define the precise scope and limits of what is included or excluded from each section
- Each Chapter within a Section may also be preceded by legal notes that also define what is included or excluded from the chapter

SECTION XVI	
MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES	
	XVI-1
<u>Notes</u>	
1. This section does not cover:	
(a)	Transmission, conveyor or elevator belts or belting, of plastics of chapter 39, or of vulcanized rubber (heading 4010); or other articles of a kind used in machinery or mechanical or electrical appliances or for other technical uses, of vulcanized rubber other than hard rubber (heading 4016);
(b)	Articles of leather or of composition leather (heading 4204) or of furskin (heading 4303), of a kind used in machinery or mechanical appliances or for other technical uses;
(c)	Bobbins, spools, cops, cones, cores, reels or similar supports, of any material (for example, chapter 39, 40, 44 or 48 or section XV);
(d)	Perforated cards for Jacquard or similar machines (for example, chapter 39 or 48 or section XV);
(e)	Transmission or conveyor belts or belting of textile material (heading 5910) or other articles of textile material for technical uses (heading 5911);
(f)	Precious or semiprecious stones (natural, synthetic or reconstructed) of headings 7102 to 7104, or articles wholly of such stones of heading 7116, except unmounted worked sapphires and diamonds for styli (heading 8522);
(g)	Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39);
(h)	Drill pipe (heading 7304);
(ij)	Endless belts of metal wire or strip (section XV);
(k)	Articles of chapter 82 or 83;
(l)	Articles of section XVII;
(m)	Articles of chapter 90;



Principles of Tariff Classification

- The HTS covers all imported merchandise whether or not the merchandise is specifically provided for or not
- Merchandise may be provided for according to its:
 - Material composition
 - Use, application, or function
 - Common meaning (eo nomine), scientific, or technical name
- Terms not defined in the HTSUS are defined according to the common and commercial meaning of the term
 - As derived from dictionaries and dictionaries of scientific and technical terms, as well as other authoritative sources.



The General Rules Of Interpretation

Text of GRI 1

- For legal purposes, classification is determined according to the terms of the headings and any relative section or chapter notes and,
- provided such headings or notes do not otherwise require, according to the **remaining GRI's**.

- Bausch & Lomb, Inc. v. United States: 21 C.I.T. 166; 957 F. Supp. 281 (1997)
- Merchandise must first be classified at the 4 digit heading level under the terms that most specifically describe the merchandise
 - Only 4-digit headings are comparable
 - No consideration may be given to the terms of any subheadings prior to consideration of the heading level

Principles of Tariff Classification: GRI 2(a)



➤ Treatment of unfinished, incomplete, or unassembled goods:

GRI 2(a)

- ❖ A reference in a heading to an article includes:
 - the incomplete or unfinished article, provided,
 - as entered, the incomplete or unfinished article has the essential character of the complete or finished article.
- ❖ Rule 2 (a) also provides that a heading includes articles complete or finished but which are imported in an unassembled or disassembled form.



Principles of Tariff Classification

- **Essential character** varies depending on the type of goods
- It may be determined by the **nature of the material** or component, its bulk, quantity, weight or **value**, or by the **role of each material** in relation to the use of the goods
- Recent court decisions on essential character for GRI 3(b) purposes have looked primarily to the role of the constituent materials in relation to the use of the goods
- See, Better Home Plastics Corp. v. U.S., 916 F. Supp. 1265 (CIT 1996), aff'd 119 F. 3d 969 (Fed. Cir. 1997); Mita Copystar America, Inc. v. U.S., 966 F.Supp. 1245 (CIT 1997)



GRI 2(b): Classification of Combinations of Materials or Substances

➤ Imports consisting of combinations of materials or substances:

GRI 2(b)

- A reference in a heading to a material or substance includes
 - mixtures or combinations of that material or substance with other materials or substances.
 - a reference to goods consisting wholly or partly of such material or substance.
- The classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.



Principles of Tariff Classification: GRI 3(a)

- The heading which provides the most specific description shall be preferred to the heading that provides a more general description.

- Rule of Relative Specificity:
 - The most specific provision is the one with the requirements:
 - most difficult to satisfy and
 - describe the article with the greatest degree of accuracy and certainty.
 - Orlando Food Corp. v. United States, 140 F.3d 1437, 1440 (Fed. Cir. 1998).
 - In Sharp Microelectronics Technology, Inc v. United States, 122 F.3d 1446 (Fed. Cir. 1997), the court concluded that Heading 9013, HTSUS, is more specific than a heading providing for parts

Principles of Tariff Classification



- Where is an electric tooth brush classified?
 - Heading 9603 provides for Brooms & Brushes
 - Subheading 9603.21 specifically provides for toothbrushes
 - Heading 8509 provides for electromechanical domestic appliances with a self-contained motor
 - Electric toothbrushes are correctly classified under HTSUS Heading 8509 “as Electromechanical domestic appliances with self-contained electric motor”



Limitations on GRI 3(a)

- When the headings each refer to:
 - only part of the materials or substances contained in mixture
 - or a composite article
 - or to only part of the items in a set put up for retail sale
- the headings are regarded as equally specific
- Classification is resolved by applying **GRI 3(b) or (c)**

GRI 3(b): Composite Goods, Retail Sets & Essential Character



GRI 3(b)

- Goods that consist of:
 - mixtures
 - composite goods consisting of different materials or made up of different components, and
 - goods put up in sets for retail sale (retail set rule)
 - are classified as if they consist of the material or component which gives them their essential character



What is a Composite Article?

- For purposes of Rule 3(b) composite goods are made up of different components that are:
 - Attached to each other to form a practically inseparable whole or
 - Consist of separate components, provided:
 - adapted for use with one another,
 - are mutually complementary and,
 - together they form a whole which would not normally be offered for sale in separate parts.

Composite Goods: Hair Barrette NY N017853



- The sample submitted is a barrette with a pinch clip.
 - The clip is made of metal and decorated with a fabric bow.
 - There is no specific provision for a hair barrette
 - the barrette is a **composite good** [metal, textile]
- classification is governed by GRI 3(b), HTSUS
 - The metal component plays a more important role in the use of the product than the textile.
 - The metal imparts the essential character to the barrette.

Tariff Classification: The Retail Set Rule



- The term “goods put up in sets for retail sale” means goods that:
 1. Consist of at least two different articles that are classifiable in different headings;
 2. Consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 3. Are put up in a manner suitable for sale **directly to users without repacking** (e.g., in boxes or cases or on boards).
- Goods do not have to be sold at “retail”

Principles of Tariff Classification: GRI 3(c)



GRI 3(c)

If an article cannot be classified by application of GRI 3(a) or GRI 3(b), it will be classified under the **heading which occurs last** in numerical order among those that merit **equal consideration**.

- Example: Residential Optical Network Terminals-- ONT converts fiber-optic signals to copper/electric signals for distribution around the house

Each ONT is capable of receiving/delivering:

- Multiple POTS (plain old telephone service) lines
- Internet data
- Video
- 8517 – Telecommunications equipment
- 8525 -- Transmission apparatus for or television

GRI--Summary

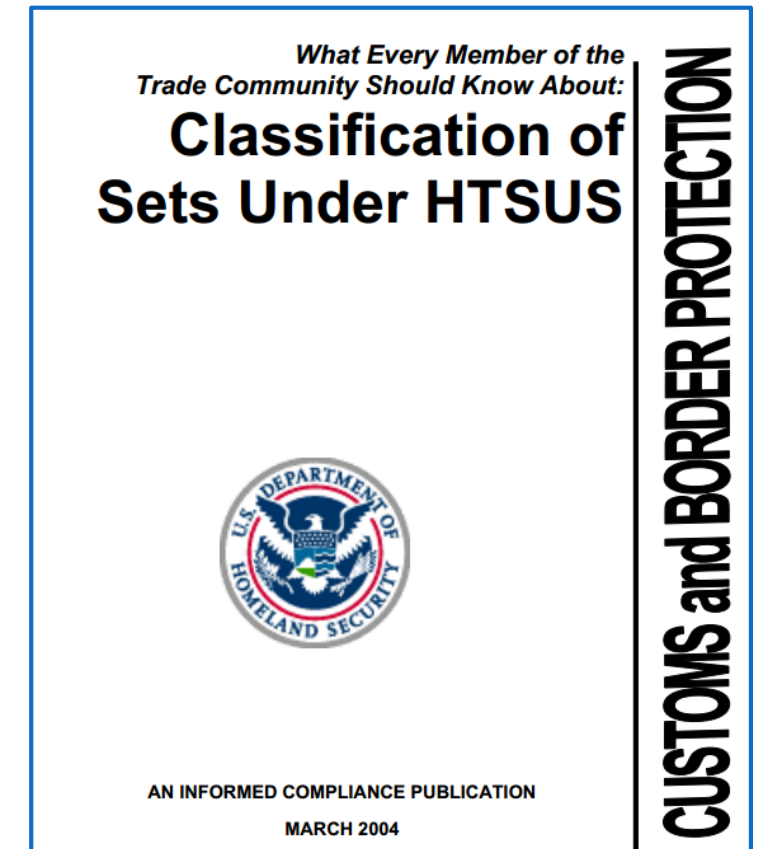


- Determine all headings that might describe all or a part of the article you wish to classify
 - Review relevant Section and Chapter Notes for each provision
 - Determine whether there is language that includes or excludes the application of a specific heading
 - If language of heading or section and chapter notes do not resolve the issue, apply GRI's 2 and 3.
 - Select the heading that is most specific
 - If headings are equally specific, article is classified according to material or component which gives the article its "essential character"
 - If the "essential character" of the article can not be determined, then the article will be classified under the heading which occurs last in numerical order among those which equally merit consideration

Classification of “Kits” & Other Shipments Involving Multiple Articles



- Basic rule: all articles must be classified separately under individual headings for each good
- Except:
 - “goods put up in **sets** for retail sale”
 1. Consist of at least two different articles that are classifiable in different headings;
 2. Consist of articles put up together to meet a particular need or carry out a specific activity; and
 3. Are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).
 - Goods meeting the **composite article** rule of GRI 3(b)
 - the components are adapted for use with one another, are mutually complementary and,
 - not normally be offered for sale in separate parts.
 - Unassembled articles (kits) that have the **essential character of the assembled article** (classified as complete, finished article)





Trade

Basic Import and Export

> ACE and Automated Systems

Border Interagency Executive
Council

> Programs and Administration

> Priority Trade Issues

Rulings and Legal Decisions

Federal Register Notices
(By Year)

Federal Register Notices
(Searchable)

Customs Bulletin and
Decisions

> Stakeholder Engagement

Informed Compliance Publications

CBP has a number of Informed Compliance Publications (ICPs) in the "What Every Member of the Trade Community Should Know About: ..." series. As of the date of this posting, the subjects listed are available for reading or downloading. The first date shown is the original publication date. The subsequent dates, if any, show the revisions.

Additionally, CBP publishes several [Directives and Handbooks](#), which provide guidance to the public on a variety of trade-related matters.

Available ICP downloads:

[ABC's of Prior Disclosure](#)

[African Growth and Opportunity Act AGOA](#)

[Agglomerated Stone](#)

[Agricultural Actual Use Provisions](#)

[Articles of Wax, Artificial Stone and Jewelry](#)

[Ball Bearings](#)

[Base Metal Mountings and Fittings](#)

[Basic Forms of Non-Ferrous Metals](#)

[Beauty and Skin Care Products of Heading 3304](#)

[Bona Fide Sales & Sales for Exportation to the United States](#)

[Button, Snap Fasteners, Slide Fasteners and Similar Articles](#)

[Buying & Selling Commissions](#)

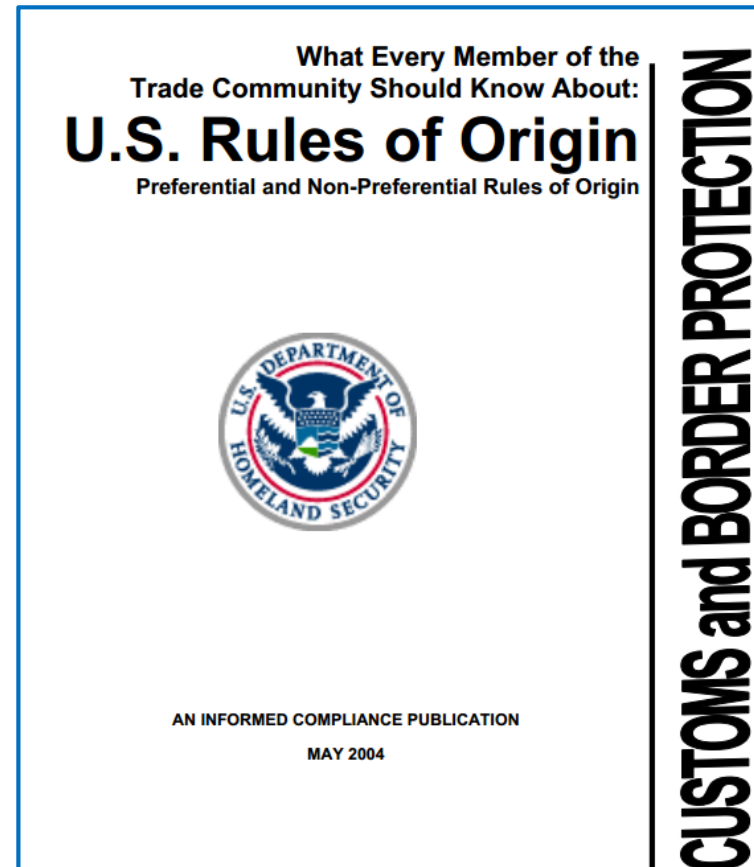


CBP Informed Compliance Publications

Country of Origin & Marking



- Knowing an article's **Country of Origin** is important, why?
- relates to admissibility of the article
 - Critical for marking purposes
 - Critical for AD/ CV Duty application
 - Critical for qualifying FTA and special trade programs
 - Critical for Government Procurement and the Buy America Act (TAA waivers)
 - Critical for products with "quota" and quantitative restrictions
 - Required on entry documentation



Country of Origin



➤ § 134.3 Delivery withheld until marked and redelivery ordered

- Any imported article (or its container) will not be delivered until marked with its country of origin, or until estimated duties payable under 19 U.S.C. 1304(f).
- Port director may demand redelivery of any article conditionally released which is found to be not marked legally with its country of origin for the purpose of requiring the article (or its container) to be properly marked.
- A demand for redelivery will be made, as required under §141.113(a) of this chapter, not later than 30 days after—
 - The date of entry or the end of the “conditional release” period.

Country of Origin Marking: The Statute



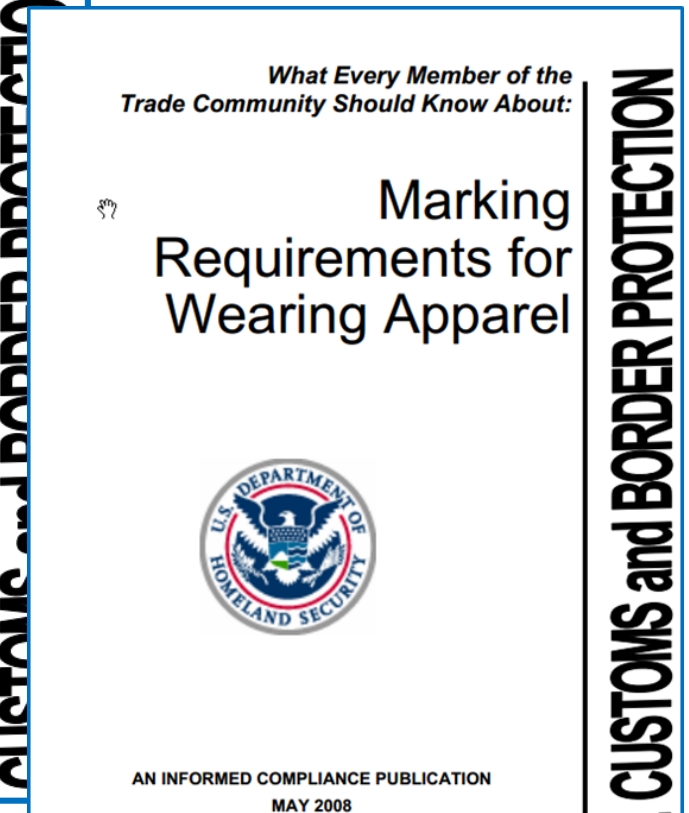
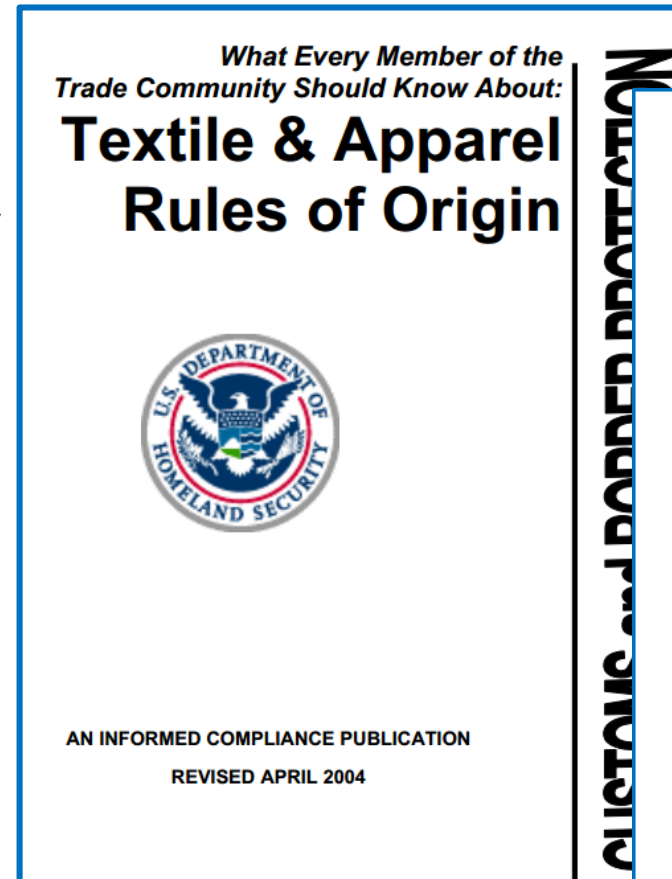
19 USC 1304

- Unless an exemption applies
- every article of foreign origin
- or its immediate container
- must be marked in a manner to permit
- the Ultimate Purchaser in the U.S. to know . . .
- the English name of the country of origin of the article.

Country of Origin & Marking: The Regulations



- 19 CFR 134 - Country of Origin Marking
- 19 CFR 102 – Rules of Origin (**Not covered**). Rules for determining the country of origin of:
 - [NAFTA goods](#)
 - [textile and apparel products](#)
 - § 102.23 Origin and Manufacturer Identification
 - Rules for Constructing Manufacturer Identification Code (MID)
- Government Procurement; Country-of-Origin Determinations CR sections 177.21- .31



Origin Rules: Basic Concepts



- Two basic concepts determine the origin of goods:
 - “*wholly obtained*” products and
 - products having undergone a “*substantial transformation*.”
- One country of production/manufacture:
 - “Wholly obtained” concept will apply
 - Applies to products obtained in their natural state and **products derived** from “wholly obtained” materials.
- Concept of **Substantial Transformation** is common to many areas of customs law: GSP and older preference programs, Drawback, Dumping/ CV subsidies origin, Government Procurement

Origin Rules: Substantial Transformation



- If **two or more countries** are involved in the production of the good or its materials
- the country of "last substantial transformation" determines the origin of the goods.

"Manufacture implies a change, but every change is not manufacture * * *. There must be transformation; a new and different article must emerge, 'having a distinctive name, character, or use.'" Anheuser-Busch Brewing Ass'n v. United States, 207 U.S. 556, 562 (1908).

- A “substantial transformation” occurs:
 - when an article emerges from a manufacturing process with a **name, character, or use** that differs from the **original material**. NY N248127 (2013)

The Substantial Transformation Rule



- Whether substantial transformation occurs is determined on a “case-by-case basis”
- Factors that support substantial transformation:
 - A physical change in the material or article;
 - The time involved in the manufacturing or processing;
 - The complexity of the manufacturing or processing;
 - The level or degree of skill and/or technology required in the manufacturing or processing operations;
 - The value added to the article or material.

Simple Assembly or Combining Operations



- The determinative factor whether the combining of parts or materials constitutes a substantial transformation is:
 - The extent of operations performed and whether the parts lose their identity and become an integral part of the new article. Belcrest Linens v. United States, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984).
 - Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97.
- If the manufacturing or combining process is merely a minor one which leaves the [identity of the material intact](#), no [substantial transformation](#) has occurred. Uniroyal, Inc. v. United States, 3 CIT 220

Marking Rule for Sets, Mixtures, and Composite Goods



- Treasury Decision (T.D.) 917, dated January 16, 1991
 - mere inclusion of an item in a “**collection**” will not substantially transform it into an article with a new name, character or use, therefore, **each item must be separately marked with its own country of origin.**
 - mere packaging of the various components of the repair kit in the United States does not substantially transform the individual components and so the origin of each foreign component in the repair kit must be identified. HQ H025404 (2008)
 - Articles or their packages must be marked so as to show the origin of every major component of the kit. HQ H009368, dated September 27, 2007.

Marking Rule for Sets, Mixtures, and Composite Goods



- Treasury Decision (T.D.) 91-7, dated January 16, 1991
 - Small/ insignificant Parts
 - in certain circumstances, the marking of every item in a collection of goods may not be consistent with the purpose of the statute, or may be impractical and/or undesirable.
 - This may be because one or more items in the collection are relatively insignificant and would have no influence on the purchasing decision, because the items in the collection are too numerous, making it impractical to specify the country of origin of each item, or for various other reasons.
 - In such cases, Customs will employ a "common sense" approach
 - See HQ H050245, February 9, 2009 for a discussion of the application of this rule.



§ 134.32 Exceptions to Marking

- 134.32 Exceptions To Marking requirements:
 - a) The article is incapable of being marked
 - b) The article can not be marked prior to importation without injury
 - c) The article can not be marked prior to importation except at an expense which is economically prohibited
 - d) The marking of the container will reasonably indicate the origin of the article
 - e) The article is a crude substance
 - f) The article will be used by the importer and not intended for sale in their imported or any other form
 - g) The article will be processed in the U.S. by the importer or for his account and subsequent processing will obliterate, destroy or permanently conceal the mark
 - h) By reason of the character or the article or by reason of the circumstances of its importation the Ultimate Purchaser must necessarily know the origin of the article

§ 134.32 General exceptions to marking



- h) The article was produced more than 20 years ago
- i) The article is on the [“J” list](#)
- j) The article can not be marked after importation except at an expense which is economically prohibited and the failure to mark the article before importation was not due to any purpose of the importer, seller or manufacturer to avoid compliance

➤ “J” List articles are exempt from individual marking requirements:

- “J” List Articles (19 C.F.R. 134.33)(examples):
 - Eggs, Feathers Flowers, Fruits, nuts and berries, Rivets, Rope, Screws
 - Containers of “J” list articles must be marked, unless the container is excepted

Country of Origin Marking



➤ No Exemptions

○ Pipe and Pipe Fittings

- No exception from marking may be made with respect to **pipes** of iron, steel, or stainless steel, **pipe fittings** of steel, stainless steel, chrome-moly steel, or cast and malleable iron
- each must be marked with the English name of the country of origin **by means of die stamping, cast-in-mold lettering, etching, engraving, or continuous paint stenciling.**
- If it is technically or commercially infeasible to mark by one of the five methods ... the article may be marked by an equally permanent method of marking or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles

○ Compressed gas cylinders

- No exception from marking may be made with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases

○ Manhole rings or frames, covers, and assemblies thereof

- No exception from marking may be made with respect to manhole rings or frames, covers, and assemblies



Country of Origin Marking: How to Mark

- Methods of Marking (19 C.F.R. 134.41, 134.44):
 - Must be sufficiently indelible and permanent to survive normal distribution and handling until delivered to Ultimate Purchaser
 - Certain articles require special marking (hand tools, surgical, dental, scientific instruments; knives, forks and scissors; pipe and pipe fittings)
- Location and Size of Marking
 - Must be sufficiently visible and located to allow the ultimate purchaser to easily find and read without strain.
- Customs is very stringent in approving the use of abbreviations
 - abbreviations of country names "which unmistakably indicate the name of a country" ... are acceptable. 19 CFR 134.45(b)
 - No published list (although see T.D. 92-38, dated April 2, 1992, for list of acceptable names of the former republics of the Soviet Union)
 - abbreviation must unmistakably indicate the country of origin to an ultimate purchaser of a product.
 - Should ask before using or applying any abbreviation that has not been previously accepted by CBP

The Close Proximity Rule

19 CFR 134.46



- When the name of a country or locality other than the country of origin appears on the article or its immediate container (such as name or address of seller or distributor of the product)
 - the country of origin of the product must appear in **close proximity** to and in at least **a comparable size**, preceded by the words “made in,” “product of,” or “assembled in,” or words of similar meaning.
 - If there is insufficient space, the country of origin marking shall take precedence.

Country of Origin Marking: Articles Repackaged After importation



- Articles Repacked or Manipulated After Importation (19 C.F.R. 134.26)
 - Unless the imported foreign articles are substantially transformed by postimportation processing, **articles that are repacked or manipulated after importation** must be packaged in containers that display the country of origin of the article
 - Certifications to Customs
 - Importers that repackage articles must provide Customs with a certificate of marking of repacked articles
 - Importers that provide articles to third parties that will repackage articles must provide third party with notice of marking requirements
 - Failure to comply with the certification requirements can subject an importer to a demand for liquidated damages under §134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592. CR 134.26(e)

Treatment of articles found to be not legally marked

- Origin and Marking relate to admissibility of goods
 - Customs may detain, seize, or demand redelivery of goods that are not properly marked
 - CF-4647 "Notice to Mark and/or Redeliver"
- Goods will be detained until marked by importer, exported, or destroyed under Customs Supervision
- If released CBP can order the redelivery of the goods within 30 days of release or “conditional release”

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

**NOTICE TO MARK
AND/OR
NOTICE TO REDELIVER**

PIEDMONT CUSTOM HOUSE BROKERS,
19 CFR 134.51, 134.52, 141.113

1. FROM
U.S. Customs and Border Protection
6601 NW 25 Street
Miami, Fl 33122

2. NAME OF CONTACT PERSON
[REDACTED]

3. TELEPHONE NO.
(305) 869-2518

4. TO (Importer of Record Name and Address):
[REDACTED]

5. PORT OF ENTRY
5201

6. ENTRY NO.
[REDACTED]

7. DATE OF ENTRY
[REDACTED]

8. BROKER OR IMPORTER FILE NO.
[REDACTED]

The merchandise described below is in violation of statute(s)/regulation(s) as indicated, and cannot be entered into the commerce of the U.S. until brought into conformity as noted below in Section II. If it is not brought into conformity, redelivered, exported, or destroyed under Customs supervision within 30 days from the date of this Notice or by the time specified by another Government agency having jurisdiction over the importation, liquidated damages and/or criminal/civil penalties shall apply.

9. STATUTE(S)/REGULATION(S) VIOLATED
19 U.S.C. 1304 (Section 304, Tariff Act of 1930)
(Country of Origin Marking Violation) ☒ Other, Namely: ☒ 19 CFR 141.113

10. DESCRIPTION OF MERCHANDISE	11. QUANTITY	12. IDENTIFYING MARKS AND NUMBERS	13. SHIPPER/MANUFACTURER
[REDACTED]	[REDACTED]		[REDACTED]

14. ACTION REQUIRED OF IMPORTER
☐ Merchandise must be brought into compliance as specified below or returned to Customs custody within 30 days of this Notice or other time specified.
☐ Marking or other corrective action must be done under Customs supervision.
☐ Customs supervision of marking or other corrective action not required. After all merchandise has been brought into conformity with cited statute(s)/regulation(s), complete the certification below and return copy to Customs ☐ with ☐ without a sample.
WARNING: All merchandise must be retained until you are notified by Customs that corrective action is acceptable.
☒ Merchandise must be redelivered to Customs within 30 days from date of this Notice or other time specified.

15. REMARKS/INSTRUCTIONS/OTHER ACTION REQUIRED OF IMPORTER
The FDA regulated merchandise in this shipment must be redelivered to the Customs and Border Protection within 30 days from the date of this notice. (19CFR 141.113(b)/21 USC 381). Redelivery is to be made to: Customs and Border Protection 6601 NW 25 Street Room 202 IST # 483 Miami Florida. Team 483's phone # 305 869-2518.

16. SIGNATURE OF CUSTOMS OFFICER
[REDACTED]

17. DATE
[REDACTED]

SECTION III -- IMPORTER CERTIFICATION (To Be Completed By Importer/Authorized Agent)
IMPORTER—APPROPRIATE ITEMS MUST BE COMPLETED, SIGNED, AND DATED BEFORE ACCEPTANCE BY CUSTOMS.

☐ Merchandise to be ☐ exported. ☐ destroyed under Customs supervision in lieu of marking or other required corrective measures.

I (We) guarantee the payment of all expenses incident to the above action.

SIGNATURE OF IMPORTER OR AUTHORIZED AGENT _____ TITLE _____ TELEPHONE _____ DATE _____

SECTION IV (To Be Completed By Customs)

☐ Merchandise excepted from marking under _____

☐ Merchandise has been legally marked or otherwise brought into conformity with cited statute(s)/regulation(s): ☐ under Customs supervision ☐ certification accepted

☐ Merchandise was ☐ exported ☐ destroyed under Customs supervision ☐ Other, namely: _____

16. SIGNATURE OF CUSTOMS OFFICER _____ 17. DATE _____

Treatment of Articles Found to be Not legally Marked

- Articles not legally marked after released from Customs Custody
 - Customs has **30 days from date of Entry to issue a request for Sample** (CF-28)
 - Importer has 30 days to respond with sample
 - Demand to redeliver must be issued within 30 days of providing sample (See 19 C.F.R. 141.113) (**C/O origin only, non-textile**)
 - Importer may protest demand for redelivery (19 USC 1514)
 - Importer may redeliver articles for remarking, or
 - upon request, **mark articles on premises** and certify to Customs that goods have been properly marked

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection		OMB No. 1651-0023 Exp. 03-31-2014	
REQUEST FOR INFORMATION 19 CFR 151.11		1. Date of Request	
		2. Date of Entry and Importation	
3. Manufacturer/Seller/Shipper	4. Carrier	5. Entry No.	
5a. Invoice Description of Merchandise	5b. Invoice No.	6. HTSUS Item No.	
7. Country of Origin/Exportation		8. CBP Broker and Reference or File No.	
9. TO:		10. FROM:	
Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.		11a. Port	11b. Date Information Furnished
General Information and Instructions on Reverse			
12. Please Answer Indicated Question(s)		13. Please Furnish Indicated Item(s)	
<input type="checkbox"/> A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise. <input type="checkbox"/> B. Identify and give details of any additional costs/expenses incurred in this transaction, such as: <input type="checkbox"/> (1) packing <input type="checkbox"/> (2) commissions <input type="checkbox"/> (3) proceeds that accrue to the seller <input type="checkbox"/> (4) assists <input type="checkbox"/> (5) royalties and/or license fees		<input type="checkbox"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto. <input type="checkbox"/> B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates. <input type="checkbox"/> C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article. <input type="checkbox"/> D. Submit samples: Article number and description _____ from container _____ mark(s) and number _____ Samples consumed in analysis, and other samples whose return is not specifically requested, will not normally be returned. <input type="checkbox"/> E. See item 14 below.	
14. CBP Officer Message			
15. Reply Message (Use additional sheets if more space is needed.)			
16. CERTIFICATION It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)			
I hereby certify that the information furnished herewith or upon this form in response to this inquiry is true and correct, and that any samples provided were taken from the shipment covered by this entry.		16a. Name and Title/Position of Signer (Owner, Importer, or Corporate/Company Official)	
		16b. Signature	
		16c. Telephone No.	16d. Date
17. CBP Officer		18. Team Designation	19. Telephone No.

CBP Form 28 (03/11)

Treatment of Articles Found to be Not legally Marked



§ 141.113 Recall of merchandise released from Customs custody.

(a)(1) Merchandise not legally marked. Certain merchandise is required to be marked or labeled pursuant to the following provisions:

(i) Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), pertaining to marking with country of origin;

**** (2) If such merchandise is found after release to be not legally marked, the port director may **demand its return to CBP custody** for the purpose of requiring it to be properly marked or labeled.

The demand for marking or labeling shall be made not later than 30 days after the date of entry in the case of merchandise examined in public stores, and places of arrival, such as docks, wharfs, or piers. Demand may be made no later than 30 days after the date of examination in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the port director.

Treatment of Articles Found to be Not legally Marked



➤ Liquidated Damages

- Failure to redeliver goods subject to a notice of redelivery equal to value of goods, plus duties. (Applies only to C/O marking violations)
- Breach of Customs Bond
- Liquidated damages are not subject to protest and administrative review
- May file administrative petition for mitigation of assessment
- Check to make sure that CF-4647 (demand for redelivery) was issued timely.

➤ Marking duties

- Any article found to be not legally marked is subject to marking duties of 10%
- Assessment of marking duties is subject to protest and administrative review
- Burden is on importer to prove goods are/were properly marked.

The FTC & Product Marking: The FTC & Product Marking/ Marketing– Deceptive labeling



- **FTC requires that a product marked or advertised as *Made in USA* be "all or virtually all" made in the U.S.**
 - All significant parts and processing that go into the product must be of U.S. origin.
 - Product should contain no — or negligible — foreign content.
- **Qualified claims**
 - Claims that describes the extent, amount or type of a product's domestic content or processing are OK
 - Product that includes foreign components may be called "Assembled in USA" when is principal assembly takes place in the U.S. and the assembly is substantial (I.e. substantial transformation)
 - "Screwdriver" assembly in the U.S. of foreign components into a final product doesn't usually qualify for the "Assembled in USA" claim.
- **Special labeling requirements for Textile and Apparel articles**
 - ✓ <https://www.ftc.gov/tips-advice/business-center/guidance/threading-your-way-through-labeling-requirements-under-textile>

The screenshot shows the FTC website's navigation bar with links for 'ABOUT THE FTC', 'NEWS & EVENTS', 'ENFORCEMENT', 'POLICY', 'TIPS & ADVICE', and 'I WOULD LIKE TO...'. The main content area is titled 'Complying with the Made in USA Standard' and includes a search bar, tags for 'Advertising and Marketing' and 'Made in USA', and a related rule for 'Textile Fiber Rule'. A summary box states: 'Marketers and manufacturers that promote their products as Made in USA must meet the "all or virtually all" standard. This publication offers practical guidance on Made in USA claims.' Below this is a 'View PDF (264.13 KB)' link and a list of links: 'Introduction', 'Basic Information About Made In USA Claims', 'The Standard For Unqualified Made In USA Claims', 'Qualified Claims', 'Comparative Claims', 'The FTC and The Customs Service', 'Other Statutes', and 'What To Do About Violations'. The 'INTRODUCTION' section begins with: 'The Federal Trade Commission (FTC) is charged with preventing deception and unfairness in the marketplace. The FTC Act gives the Commission the power to bring law enforcement actions against false or misleading claims that a product is of U.S. origin. Traditionally, the Commission has required that a product advertised as Made in USA be "all or virtually all" made in the U.S. After a comprehensive review of Made in USA and other U.S. origin claims in product advertising and labeling, the Commission announced in December 1997 that it would retain the "all or virtually all" standard. The Commission also issued an Enforcement Policy Statement on U.S. Origin Claims to provide guidance to marketers who want to make an unqualified Made in USA claim under the "all or virtually all" standard and those who want to make a qualified Made in USA claim.'

Challenging CBP decisions: Rulings, Protests and Scope Requests



➤ Challenging CBP decisions (Administrative Ruling Requests)

- Pre-liquidation Actions
 - CBP Forms 28 (Request for Information)
 - Requests for Internal Advice
- Post – Liquidation Actions (Protests)
 - Local Protests (Local review by Port or CEE)
 - Protests and Applications for Further Review (HQ review and decision)

Challenging CBP decisions: Rulings and Protests



➤ What is a “**ruling**” ?

- A written statement issued by **Customs Headquarters** or an appropriate office of Customs (e.g., **New York Commodity Branch**) that interprets and applies the provisions of the Customs laws to a specific set of facts.
- Official position of Customs with respect to a particular transaction and is binding until modified or revoked.
- Rulings are effective on the date issued and applies to all entries that are unliquidated or for which Customs has not taken final action.
- CBP Administrative Ruling are issued in response to an **Internal Advice Request** or a **Protest and Application for Further Review**.
- **Rulings** are not binding on 3rd parties but are illustrative of how CBP might decide a **similar question** involving the **same or similar merchandise**.

Challenging CBP decisions: Rulings and Protests



➤ Issuance of rulings generally —

- Prospective transactions
- Current transactions
- Completed transactions
 - Questions arising in connection with an entry of merchandise which has been liquidated, or in connection with any other **completed Customs transaction**, may not be the subject of a ruling request
 - CBP will not issue rulings in response to oral requests. Oral opinions or advice of Customs personnel are not binding
- 30 Day Classification Requests
 - Submitted to Port/ CEE / National commodity Specialist Division (New York Customs)
 - Generally limited to classification, certain marking, origin, NAFTA and applicability of Trade Program request

✎ Section Contents

[§ 177.0 Scope.](#)

[Subpart A-General Ruling Procedure](#)

[§ 177.1 General ruling practice and definitions.](#)

[§ 177.2 Submission of ruling requests.](#)

[§ 177.3 Nonconforming requests for rulings.](#)

[§ 177.4 Oral discussion of issues.](#)

[§ 177.5 Change in status of transaction.](#)

[§ 177.6 Withdrawal of ruling requests.](#)

[§ 177.7 Situations in which no ruling will be issued.](#)

[§ 177.8 Issuance of rulings.](#)

[§ 177.9 Effect of ruling letters.](#)

[§ 177.10 Publication of decisions.](#)

[§ 177.11 Requests for advice by field offices.](#)

[§ 177.12 Modification or revocation of interpretive rulings, protest review decisions.](#)

[§ 177.13 Inconsistent customs decisions.](#)

Challenging CBP decisions: Rulings and Protests



The screenshot shows the U.S. Customs and Border Protection website. The header includes the agency logo and name. A navigation bar lists: About CBP, Newsroom, Travel, Trade, Border Security, and Careers. Below this is a breadcrumb trail: HOME > TRADE > RULINGS AND LEGAL DECISIONS > REQUIREMENTS FOR ELECTRONIC RULING REQUESTS. The left sidebar contains a 'Trade' section with links to Basic Import and Export, ACE and Automated Systems, Border Interagency Executive Council, Programs and Administration, Priority Trade Issues, Rulings and Legal Decisions (including Federal Register Notices), Customs Bulletin and Decisions, and Stakeholder Engagement. The main content area is titled 'Requirements for Electronic Ruling Requests' and contains text about the eRulings program, submission procedures, and contact information for the National Commodity Specialist Division (NCS) in New York.

The screenshot shows the 'Electronic Ruling (eRuling) Template' page. The header includes the agency logo and name. The main content area is titled 'Electronic Ruling (eRuling) Template' and contains a welcome message, instructions for using the template, and a 'Begin Application' button. The text states: 'Welcome to the latest version of the Electronic Ruling (eRuling) Template, which allows you to transmit an electronic binding ruling request directly to the National Commodity Specialist Division (NCS) in New York. In an effort to assist you in providing all the necessary information pertaining to your specific ruling request (e.g. Classification, Marking, Origin, Trade Agreements) please read, [the Requirements for Electronic Ruling \(eRuling\) Requests](#), including the **Information Required in Ruling Requests section, before proceeding. Provide all the required information on the template and any accompanying attachments. Please select the appropriate box for the type of ruling you are requesting. You may select more than one box if your request involves multiple issues.**' It also includes a 'Paperwork Reduction Act Statement' and a 'Help setting up "auto-complete" in your browser.' link.

Challenging CBP decisions: Rulings and Protests



➤ § 177.11 Requests for advice by field offices (Internal Advice)(IA)

- May be used by Port / CEE or Importer to obtain advice or guidance from Customs Headquarters (CBP Office of International Trade, Rulings and Regulations) for pending or current transactions
- Request must contain
 - a complete description of the transaction
 - the specific questions presented, the applicable law, and an argument for the conclusions advocated
 - The statement must also specify whether, to the knowledge of the person submitting the statement, the same transaction, or one identical to it, has ever been considered, or is currently being considered, by any Customs office
- Requests for IA submitted to the Port or CEE and request to be forwarded to HQ
- **No limitation** on how long CBP may take to decide request.

Administrative Protests: 19 U.S.C. 1514

- **Administrative protests** are the traditional means of contesting decisions made by customs
- Protests may be filed to contest
 - the appraised **value** of merchandise;
 - the **classification** and **rate** and amount of duties charge;
 - the **exclusion** of merchandise from entry or delivery or a demand for redelivery to customs custody;
 - the **liquidation** or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof;
 - the refusal to pay a claim for drawback; or
 - the refusal to grant post entry Free Trade Agreement claims (NAFTA) under section 1520(d);

Subpart B-Protests

§ 174.11 Matters subject to protest.

§ 174.12 Filing of protests.

§ 174.13 Contents of protest.

§ 174.14 Amendment of protests.

§ 174.15 Consolidation of protests filed by different parties.

§ 174.16 Limitation on protests after reliquidation.

Subpart C-Review and Disposition of Protests

§ 174.21 Time for review of protests.

§ 174.22 Accelerated disposition of protest.

§ 174.23 Further review of protests.

§ 174.24 Criteria for further review.

§ 174.25 Application for further review.

§ 174.26 Review of protest after application for further review.

§ 174.27 Disposition after further review.

§ 174.28 Consideration of additional arguments.

§ 174.29 Allowance or denial of protests.

§ 174.30 Notice of denial of protest.

§ 174.31 Judicial review of denial of protest.

§ 174.32 Publication.

Protests under 19 U.S.C. 1514

- Protest must be filed at the port of entry / **CEE** after liquidation but **prior to expiration of 180th day** following liquidation, or
- Within **180 days of the date of decision** as to which the protest is made issue does not involve the liquidation of an entry
 - Exclusions
 - Charge or exaction
 - Notice of redelivery
 - Denial of Drawback claim, etc,
- **Each** entry must have a protest filed at the port of entry
 - O.K. to list more than one entry on a protest so long as protest is filed at Customs with 90 days of liquidation

Approved OMB No. 1651-0017
Exp. 03/01/2016

**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

PROTEST

Pursuant to Sections 514 & 514(a), Tariff Act of 1930 as amended, 19 CFR Part 174 et. seq.

NOTE: If your protest is denied, in whole or in part, and you wish to CONTEST the denial, you may do so by bringing a civil action in the U.S. Court of International Trade within 180 days after the date of mailing of Notice of Denial. You may obtain further information concerning the institution of an action by writing the Clerk of U.S. Court of International Trade, One Federal Plaza, New York NY 10007 (212-264-2800).

1. PROTEST NO. (Supplied by CBP)

2. DATE RECEIVED (CBP Use Only)

SECTION I - IMPORTER AND ENTRY IDENTIFICATION

3. PORT

4. IMPORTER NO.

5. ENTRY DETAILS

6. NAME AND ADDRESS OF IMPORTER OR OTHER PROTESTING PARTY

PORT CODE

FILER CODE

ENTRY NO.

CHECK DIGIT

DATE OF ENTRY

DATE OF LIQUIDATION

7. Is Accelerated Disposition being requested (19 CFR 174.22)?

☐ Yes ☐ No

SECTION II - DETAILED REASONS FOR PROTEST

8. With respect to each category of merchandise, set forth, separately, (1) each decision protested, (2) the claim of the protesting party, and (3) the factual material and legal arguments which are believed to support the protest. All such material and arguments should be specific. General statements of conclusions are not sufficient.

(Attach Additional Sheets if necessary.)

SECTION III - REQUEST FOR DISPOSITION IN ACCORDANCE WITH ACTION ON PREVIOUSLY FILED PROTEST

Protesting party may request disposition in accordance with the action taken on a previously filed protest that is the subject of a pending application for further review and is alleged to involve the same merchandise and the same issues. (See 19 CFR 174.13(a)(7).) To request such disposition, enter in Blocks 8 and 9 the protest number and date of receipt of such previously filed protest.

9. PROTEST NO. OF PREVIOUSLY FILED PROTEST

10. DATE OF RECEIPT

SECTION IV - SIGNATURE AND MAILING INSTRUCTIONS

11. NAME AND ADDRESS OF PERSON TO WHOM ANY NOTICE OF APPROVAL OR DENIAL SHOULD BE SENT

12. NAME, ADDRESS, AND CBP IDENTIFICATION NUMBER TO WHICH REFUND SHOULD BE SENT

13. IF FILING AS ATTORNEY OR AGENT, TYPE OR PRINT YOUR NAME, ADDRESS AND IMPORTER NUMBER, IF ANY

14. SIGNATURE

DATE

(Optional) **SECTION V - APPLICATION FOR FURTHER REVIEW (Fill in Item 1 above if this is a separate Application for Further Review.)**

15. MARK BOX CORRESPONDING TO YOUR ANSWER TO EACH OF THE FOLLOWING QUESTIONS

YES NO

☐ ☐ (A) Have you made prior request of a port director for a further review of the same claim with respect to the same substantially similar merchandise?

☐ ☐ (B) Have you received a final adverse decision from the U.S. Court of International Trade on the same claim with respect to the same category of merchandise or do you have action involving such a claim pending before the U.S. Court of International Trade?

☐ ☐ (C) Have you previously received an adverse administrative decision from the Commissioner of CBP or his designee or have you presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise?

16. JUSTIFICATION FOR FURTHER REVIEW UNDER THE CRITERIA IN 19 CFR 174.24 AND 174.25 (Include Applicable Rulings)

(Attach Additional Sheets if necessary.)

SECTION VI - DECISION (CBP USE ONLY)

17. APPLICATION FOR FURTHER REVIEW

Approved? ☐ Denied for the reason checked: ☐ Untimely filed ☐ Does not meet criteria ☐ Other, namely

EXPLANATION:

*When further review only is approved the decision on the protest is suspended, pending issuance of a protest review decision.

18. PROTEST EXPLANATION: ☐ Approved ☐ Rejected as non-protestable ☐ Denied in full for the reason checked: ☐ Denied in part for the reason checked: ☐ Untimely filed ☐ See attached protest review decision ☐ Other, namely

19. TITLE OF CBP OFFICER

20. SIGNATURE AND DATE

Previous Editions are Obsolete

CBP Form 19 (05/10)



Protest Matters: Contents of protest

➤ Contents of a protest (§ 174.13):

- The name and address of the protestant, i.e., the importer of record or consignee;
- The number and date of the entry (s) in question;
- The date of liquidation of the entry(s) in question,
- A specific description of the merchandise or action affected by the decision
 - i.e., demand for redelivery because merchandise was not properly marked
- The nature of the objection set forth distinctly and specifically:
 - What is incorrect value or classification
 - What is correct value or classification
 - Legal and factual argument why the protesting party is correct

Protest Matters: Requests for Further Review



➤ Further Review of Protest

- A protest is typically reviewed and decided at the Port or CEE by the same parties that participated in the original decision
- An Importer may request “further review” of the decision if the port intends to deny the protest
- A Request for Further Review, if granted, will be decided by CBP HQ Office of International Trade, Rulings and Regulations

➤ Criteria for Further Review

- Is inconsistent with a ruling, or a decision made at any port with respect to the same or substantially similar merchandise;
- Involves questions of law or fact which have not been ruled upon by Customs or the courts;
- Involves facts or legal arguments which were not considered at the time of the original ruling; or
- Involves a question HQ refused to consider in the form of a request for internal advice

➤ Further review must be requested at the same time the protest is filed, or within 180 days of the date of liquidation of the entry

- Further Review will not be granted if a **decision** on the protest is issued by Port

➤ Requests for Accelerated Disposition (19 U.S.C. 1515(b))

- A request for accelerated disposition of a protest filed in accordance with section 1514 of this title may be mailed by certified or registered mail to the appropriate customs officer any time concurrent with or following the filing of such protest
- Protest will be deemed denied on the 30th day following mailing by certified mail of request



Trade

Basic Import and Export

> ACE and Automated Systems

Border Interagency Executive
Council

> Programs and Administration

> Priority Trade Issues

Rulings and Legal Decisions

Federal Register Notices
(By Year)

Federal Register Notices
(Searchable)

Customs Bulletin and
Decisions

> Stakeholder Engagement

Rulings and Legal Decisions

U.S. Customs and Border Protection (CBP) issues binding advance rulings and other legal decisions in connection with the importation of merchandise into the United States. Advance rulings provide the international trade community with a transparent and efficient means of understanding how CBP will treat a prospective import or carrier transaction.

For example, a ruling letter may address the tariff classification or appraised value of merchandise, the liquidation of an entry, or the exclusion of merchandise from entry. As such, ruling letters facilitate trade by enabling companies to make business decisions that are dependent on how their goods will be treated on importation.

CBP also issues other binding decisions such as internal advice decisions letters (covering current import and carrier transactions), and protest review decisions (appeals of CBP decisions on completed transactions).

With a view to promoting transparency, CBP also makes available to the public various other guidance including the following: the [Customs Rulings On-Line Search System](#) (CROSS – a database of published rulings), the [Customs Bulletin and Decisions](#), pertinent [Federal Register Notices](#), [CBP Directives and Handbooks](#), [Informed Compliance Publications](#), and a [summary of laws enforced by CBP](#).

Ruling Requests

[What are Ruling Letters?](#)

[Requirements for Electronic Ruling Requests](#)

QUICK LINKS: RULINGS AND LEGAL DECISIONS

[Regulations and Rulings Contact
Numbers](#)

[Customs Bulletin and Decisions](#)

[Customs Rulings Online Search
System \(CROSS\)](#)

[Electronic Ruling Requests](#)

[Harmonized Tariff Schedule of the
United States \(HTSUS\)](#)

[Informed Compliance Publications
\(ICPs\)](#)

[Intellectual Property Rights
e-Recordation \(IPRR\)](#)

[Intellectual Property Rights Search
\(IPRS\)](#)

[Passenger Vessel Services Act \(PVSA\)](#)





Judicial Review of Denied Protests

- Except for very limited situations, exhaustion of administrative proceedings (protest) is a **precondition** to jurisdiction in Court
- Court of International Trade (CIT) has exclusive jurisdiction over most trade cases:
 - Actions to contest the denial of a protest
 - Collection and enforcement matters
 - Actions to review a customs ruling prior to importation where there is shown **irreparable harm**
 - Any other action against the government arising from tariffs, duties or fees; embargos or restrictions for reasons other than public health or safety; administration and enforcement of customs and related laws
- To contest the **denial of a protest**, a summons must be received by the CIT within **180 days** from the date of denial of the protest.
- Each protest must be summons
- more than one protest may be listed on a summons, so long as the summons is filed within 180 days of the denial of the protests

AD/CVD Scope Rulings & Requests



- Department of Commerce is responsible for describing goods subject to AD/CVD investigation/orders, and
- interpreting AD /CVD orders and determining whether products fall within the scope of the order
- **scope rulings** are often necessary for **importers** and other interested parties need clarification as to whether their products fall under the scope of an order
- 19 CFR § 351.225 Contains
 - requests for scope rulings
 - procedures for scope inquiries, and
 - standards used in determining whether a product is within the scope of an order or suspended investigation

<http://enforcement.trade.gov/scope/Request-Scope-Ruling.pdf>

Guide on How to File for an Antidumping/Countervailing Duty Scope Ruling Request

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AD/CVD Scope Rulings & Requests


- CBP can require importer to:
 - File type 03 entry and Post cash deposit
 - when merchandise is within Target HTSUS or scope description
- Importer Options
 - Scope request to Commerce
 - **File a Protest (19 USC 1514)?**
- **Generally – determination of whether merchandise is in-scope is responsibility of Commerce**
- **Importer can protest action.** see LDA INCORPORADO v. UNITED STATES, Ct. Intl. Trade SLIP OP. 2014-54, 978 F. Supp. 2d 1359 (2014)

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection								
NOTICE OF ACTION 19 CFR 152.2								
This is NOT A Notice of Liquidation			1. DATE OF THIS NOTICE 12/10/2015					
2. CARRIER NYK DEMETER (HDMU)	3. DATE OF IMPORTATION	4. DATE OF ENTRY 07/01/2015	5. ENTRY NO. [REDACTED]					
6. MFR/SELLER/SHIPPER NLMERVB2152EIN	7. COUNTRY CN	8. CBP BROKER AND FILE NO. [REDACTED]						
9. DESCRIPTION OF MERCHANDISE colored pencil and graphite pencil								
10. TO [REDACTED] INC [REDACTED] US		11. FROM Jean Xu 555 Battery St San Francisco, CA 94111-2312 US						
12. THE FOLLOWING ACTION, WHICH WILL RESULT IN AN INCREASE IN DUTIES, —								
<input checked="" type="checkbox"/> IS PROPOSED								
<input type="checkbox"/> HAS BEEN TAKEN								
TYPE OF ACTION <table border="0"> <tr> <td>A. <input checked="" type="checkbox"/> RATE ADVANCE</td> <td rowspan="4"> IF YOU DISAGREE WITH THIS PROPOSED ACTION, PLEASE FURNISH YOUR REASON IN WRITING TO THIS OFFICE WITHIN 20 DAYS FROM THE DATE OF THIS NOTICE. AFTER 20 DAYS, THE ENTRY WILL BE EITHER LIQUIDATED AS PROPOSED OR CHANGED AS PROPOSED. THE ENTRY IS IN THE LIQUIDATION PROCESS AND IS NOT AVAILABLE FOR REVIEW IN THIS OFFICE. </td> </tr> <tr> <td>B. <input type="checkbox"/> VALUE ADVANCE</td> </tr> <tr> <td>C. <input type="checkbox"/> EXCESS <input type="checkbox"/> WEIGHT <input type="checkbox"/> QUANTITY</td> </tr> <tr> <td>D. <input type="checkbox"/> OTHER (See below)</td> </tr> </table>				A. <input checked="" type="checkbox"/> RATE ADVANCE	IF YOU DISAGREE WITH THIS PROPOSED ACTION, PLEASE FURNISH YOUR REASON IN WRITING TO THIS OFFICE WITHIN 20 DAYS FROM THE DATE OF THIS NOTICE. AFTER 20 DAYS, THE ENTRY WILL BE EITHER LIQUIDATED AS PROPOSED OR CHANGED AS PROPOSED. THE ENTRY IS IN THE LIQUIDATION PROCESS AND IS NOT AVAILABLE FOR REVIEW IN THIS OFFICE.	B. <input type="checkbox"/> VALUE ADVANCE	C. <input type="checkbox"/> EXCESS <input type="checkbox"/> WEIGHT <input type="checkbox"/> QUANTITY	D. <input type="checkbox"/> OTHER (See below)
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B. <input type="checkbox"/> VALUE ADVANCE								
C. <input type="checkbox"/> EXCESS <input type="checkbox"/> WEIGHT <input type="checkbox"/> QUANTITY								
D. <input type="checkbox"/> OTHER (See below)								
13. EXPLANATION (REFER TO ACTION LETTER DESIGNATIONS ABOVE) After reviewing line#062 for graphite pencils and line#063 for colored pencils for compliance, we found that the colored pencil was misclassified as 9609.20.4000, which provides for pencil leads, black or colored. The correct tariff number is HTS#9609.10.0000, which provides for pencils and crayons with leads encased in a rigid sheath. The duty rate is 14 cents per gross plus 4.3 %. Please also see attached ruling# NY K83562 for reference. We also found that the incorrect country of origin listed on the line#062 graphite pencils. Both graphite pencils and colored pencils made in China are subject to antidumping duties 114.90% under the case#A570-827-000. The entry type will be changed from type 001 to 003 This entry will be rate advanced with the correct duties. Please ensure future entries with these products are correctly classified. If you have further questions, please contact U.S Customs and Border Protection CST 777. 415.782.9377								
14. CBP OFFICIAL Jean Xu	15. TEAM DESIGNATION 777	16. TELEPHONE 415-782-9376						
17. FAX NUMBER	18. EMAIL jean.x.xu@cbp.dhs.gov							

CBP Form 29 (06/14)

Protest filing



 You are subscribed to ACE Portal Accounts for U.S. Customs and Border Protection. This information has recently been updated, and is now available.

[CSMS# 16-000646 - Federal Register Notice Published Announcing the ACS to ACE Transition for Protest](#)

07/28/2016 09:56 AM EDT

ACE Portal Accounts

U.S. Customs and Border Protection (CBP) published today a Federal Register Notice (FRN) announcing the Automated Commercial Environment (ACE) Protest Module as the sole CBP-authorized method for filing electronic protests.

Attached is a pdf of the notice, which can also be found at the following URL:

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-28/pdf/2016-17915.pdf>