GENERAL NOTICE

19 CFR PART 177

MODIFICATION OF RULING LETTER ALLOWING CONTAINERS CONTAINING RESIDUAL CHEMICALS TO BE ENTERED AS EMPTY CONTAINERS

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

ACTION: Notice of modification of a headquarters ruling letter allowing containers containing residual chemicals to be entered as empty containers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182,107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (‘‘CBP’’) is modifying one ruling letter allowing containers containing residual chemicals to be entered as empty containers. Notice of the proposed action was published in the Customs Bulletin, Vol. 42, No. 35, on August 20, 2008.

DATE: This action is effective for containers arriving in the United States on or after August 16, 2009.

FOR FURTHER INFORMATION CONTACT: Christina Kopitopoulos, Cargo Security, Carriers, and Immigration Branch, at (202) 325–0217.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 42, No. 35, on August 20, 2008, proposing to modify HQ 113129, dated July 12, 1994, which allowed containers meeting the requirements of 19 U.S.C. 1322(a) and 19 CFR 10.41a as instruments of international traffic (IITs) and containing residual chemicals to be entered as empty containers. In order to be consistent with CBP's treatment of similar commodities, such as petroleum slops, and to ensure the safety and security of the transportation of such containers and CBP Officers who examine them, CBP proposed that the containers should not be entered, nor manifested, as empty, and the chemical residue contained should be classified, entered, and manifested.
Fourteen (14) comments were received in response to the notice. Numerous comments were received seeking clarification of the scope of the modified ruling, i.e., was it limited to steel containers and chemicals? CBP in this notice is specifically modifying HQ 113129, and any other ruling not specifically identified that is contrary to the determination set forth in this notice. Containers with cargo, regardless of the amount of the cargo, will need to be manifested and entered in compliance with all customs laws.

One commenter suggested CBP use the term ''portable tank'' to reference these containers. CBP agrees that this is one type of container that is at issue in the proposed modification and this notice. Henceforth, when CBP refers to containers, that reference includes ''portable tanks,'' but is not limited to that type of container.

Three commenters stated that their containers are already marked and placarded as required by the Department of Transportation and the shipping documentation accompanying the containers includes a Material Safety Data Sheet that describes the residue inside the container, so the modified ruling is unnecessary. CBP disagrees, as these containers are not actually empty and therefore are not in compliance with the advance cargo information transmission requirements under 19 CFR 123.91 and 123.92. They are also not in compliance with the requirement to make entry pursuant to 19 CFR 141.4 as they are not merely empty IITs. The lack of compliance with customs laws is not only a security risk to the United States, but a potential risk to the health and safety of CBP officers unaware of the volume or contents of the containers they are encountering. In addition, the revenue collection responsibilities of CBP are affected due to such lack of compliance.

Numerous commenters stated that they fail to see how the new requirements will protect CBP officers, and that those officers should not be opening containers used to transport hazardous materials nor should CBP's treatment of the containers differ based on the contents. CBP disagrees as CBP officers have a right to know if they are in close proximity to, or working with, an empty container or a partially empty container that may pose a risk not only to the United States, but also to their own health and safety.

Numerous commenters stated that the costs associated with filing the entries and manifests would be burdensome resulting in exorbitant expenses. CBP is aware that costs for these containers would increase as advance cargo declarations and entries would be required to be filed. As to manifests, empty containers have always been required to be

manifested, and a container must be empty to be manifested as such. Furthermore, these costs would merely bring the containers in compliance with customs laws they should have been subject to all along.

A number of commenters stated they believe this requirement is new and should be submitted to OMB as a new information collection request and/or is a new significant rulemaking. CBP disagrees, and notes that this modification merely brings these containers in line with customs legal requirements from which they were incorrectly exempted in HQ 113129.

Three commenters stated that under NAFTA these new requirements will not generate revenue. CBP demurs because whether revenue is generated is not pertinent since this change is being made for the safety and the security of the CBP officers at the ports of entry. One commenter stated that it is common industry practice not to ‘‘clean and purge’’ bulk packaging if it is to be refilled with the same or compatible products. This common industry practice does not obviate the trade’s responsibility for knowing what is in the containers, where they originated, or the amount actually in the containers. If anything, it further illustrates the need for manifesting and filing entries on the residue.

Two commenters stated that in terms of exact quantities, railcars and bulk containers are filled to visible capacity, but not ‘‘scaled’’ until well en route. CBP believes that industry practice must be reconciled with CBP’s advance cargo information transmissions required pursuant to 19 CFR 123.91 and 123.92, which provide that the quantity information is required 2 hours prior to arrival for rail, 1 hour prior to arrival for non-FAST truck carriers, and 30 minutes prior to arrival for FAST truck carriers.

Numerous commenters stated the modified ruling will increase border crossing congestion, decrease the effectiveness of FAST lanes, and underutilize ACE. CBP disagrees with this statement as there is no evidence supporting these claims beyond these unsubstantiated statements.

Two commenters expressed reservations in relying on an unrelated party to provide ‘‘estimated’’ quantities of residue or to know what is in the shipping containers prior to importation. Any information provided by an unrelated party could be incorrect and lead to penalties. CBP believes again that this further bolsters the need to receive accurate advance cargo information and entries on the residue in these containers. Either the carrier or importer is responsible to CBP for knowing what is in the containers, where it originated, or the actual amount that has been deemed to be ‘‘residue’’ for purposes of manifesting and entry.

One commenter stated that they believe there exists the potential for environmental waste because of U.S. suppliers refusing the return of containers with residuals. The commenter offers no information beyond the unsubstantiated statement that this concern would cause a prohibitive increase in refused containers leading to environmental waste.

One commenter asked about the liability involved in ‘‘dedicated’’ shipping containers that just go back and forth across the border to move the same chemical and are never cleaned, but may be used by the foreign customer for whatever purposes they want, and are then sealed for movement across the border. CBP does not believe those containers would be outside the scope of this notice, if they fell within the class of containers described herein arriving at a United States border.

One commenter asked if new drums would require documentation that the container is new and unused. CBP will not require certification that containers are new. Used and new containers are used as IITs in international trade in all contexts and certifications as to their new or used status is not required. Two commenters sought a definition of ‘‘empty.’’ CBP clarifies with the following. Empty means an empty container. There is no de minimus allowance.

As stated in the proposed notice, this modification is specifically referring to Headquarters Ruling Letter (‘‘HQ’’) 113129, dated July 12, 1994 (Attachment). This notice also covers any rulings raising this issue which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the containers subject to this notice should have advised CBP during this notice period.

As mentioned above, fourteen (14) comments were received in response to the proposed notice. The comments and CBP’s response are discussed above. Accordingly, pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 113129 and any other ruling not specifically identified that is contrary to the determination set forth in this notice and HQ H026715 (Attachment) to correctly reflect CBP’s position regarding the treatment of containers containing residual chemicals.

DATED: June 19, 2009
JEREMY BASKIN,
Director,
Border Security and Trade Compliance Division.

CBP Ruling Modification: Containers with any amount of cargo residue must be manifested and entered

2009/07/24

U.S. Customs and Border Protection (CBP) has recently indicated that cargo containers with any residue of cargo must be manifested and entered in compliance with all customs laws. This modification was announced in the July 17, 2009 Customs Bulletin (Vol. 43, No. 28, beginning on page 138).

The CBP statement was made in connection with its modification of ruling HQ 113129, in which CBP had held that a steel container qualifying as an instrument of international traffic (IIT) and filled with a chemical when exported, could be entered as empty when imported back into the U.S., even if a residue of that chemical remained in the container.

As a result of the modification, re-imported containers with residues should not be entered or manifested as empty and the residue contained should be classified, entered and manifested.

The CBP Bulletin indicates the action is effective for containers arriving in the United States **on or after Sunday, August 16, 2009**.

Highlights from the Bulletin

- The ruling being modified, HQ 113129, speaks to "steel containers (with) chemical residue." However, carriers and importers should consider the discretion of CBP to apply this modification to any IIT containers (e.g. tank trucks/cars, drums, etc.), and any cargo residue contained in them.
- CBP states that an empty container is just that, empty, and that there is no ***de minimis* allowance**.
- If any subject residue is U.S. manufactured product, (Chapter 9801, Harmonized Tariff Schedule of the United States [HTS]), the importer could certainly consider entering the residue under the appropriate U.S. Goods Returned, conditionally duty-free, HTS, should it qualify for the above-noted classification.
- Since the exact amount of the cargo residue may not be known at the time the advance cargo information is required to be transmitted, the importer should do their best in estimating the quantity and the value of the residue when providing that information to the carrier for transmitting to CBP. Additionally, the same estimated quantity/value should be used at the time of entry of the cargo residue. If more precise information is obtained after arrival, the importer should be in contact with their customs broker to amend the entry.

Need more information?

The CBP Bulletin directs questions to Christina Kopitopoulos, Cargo Security, Carriers, and Immigration Branch, at (202) 325–0217.

You may also contact your Livingston Client Service Team for additional guidance.

As always, your general questions may be directed to Livingston's U.S. Regulatory Affairs group: usregaffairs@livingstonintl.com.