

# SURGING AD/CV INVESTIGATIONS, NEW RULINGS, A NEW FTA, & NEW WAYS OF WORKING: MONEY SAVING TIPS FOR NEW TIMES

#### MITA FEBRUARY 09, 2021

Robert Boehm, LCB



Compliance • Experienced • Specialized • Value Driven

© 2021 International Customs Services, Inc.



#### **OVERVIEW**

#### ANTIDUMPING AND COUNTERVAILING; NEW CUSTOMS RULINGS

Surging Investigations. Overview of AD Process. New EAPA Reporting in ACE. Terminology.
 Where to Look for Active and Potential Future Cases. Monitoring Customs Rulings for Duty Impacts

#### A NEW FREE TRADE AGREEMENT – USMCA

 Streamlining the Processes that lead to eligibility determinations and claims. BOM Set-up & Analysis 101. Building your data for future use. Certificate issuance and an early trend in enforcement of certain data requirements.

#### ELECTRONIC CHAMBER CERTIFICATIONS

Time-saving tips to get you started on reducing the costs associated with Chamber-attested Certificates of Origin





#### DISCLAIMER

The following information is believed to be accurate and represents the best information currently available to International Customs Services, Inc. However, we make no warranty, expressed or implied, with respect to such information, and we assume no liability resulting from its use. A US Customs and Border Protection Ruling or Bureau of Industry & Security Ruling can be requested for official classifications. In no way shall International Customs Services, Inc. be liable for claims, losses, or damages of any third party or for lost profits or any special, indirect, incidental, consequential or exemplary damages, howsoever arising, even if the company has been advised of the possibility of such damages. International Customs Services is a US Customs brokerage firm. We recommend that you contact your legal counsel for all legal opinions and advice.

© 2021 International Customs Services, Inc.



# ANTIDUMPING AND COUNTERVAILING INVESTIGATIONS; NEW CUSTOMS RULINGS



#### ANTIDUMPING AND COUNTERVAILING

#### Been a little busy lately?

China 301's

Steel and aluminum 232's & Quotas

LCA 301's

**USMCA** 

Steel Import Monitoring and Analysis (SIMA) system enhancements

Expiring GSP, MTB, Brexit

New Aluminum Import Monitoring system (AIM)

GAE's to the 232's for 108 Steel and 15 Aluminum HTS.

Tightening Buy American Criteria, New & Enhanced Compliance Regimes



#### F

#### ANTIDUMPING AND COUNTERVAILING

#### Surging Investigations: 267% Increase

"Since the beginning of the administration, Commerce initiated 286 new AD and CVD investigations, a 267 percent increase from the comparable period in the previous administration."

Oct. 9, 2020

https://www.commerce.gov/news/press-releases/2020/10/us-department-commerce-issues-affirmative-preliminary-antidumping-duty



#### 厚

#### ANTIDUMPING AND COUNTERVAILING

CHRONOLOGY OF EVENTS - THE PLAYERS, PROCESS, AND TIMELINES

EVENT	AD INVESTIGATION	CV INVESTIGATION
I. "Interested Party" files Petition with ITC and DOC		
2. Initiation of the Investigation by DOC	20 Days after Event I	20 Days after Event I
3. Preliminary Injury Determination by ITC	45 Days after Event I	45 Days after Event I
4. Preliminary Dumping/Subsidy Determination by DOC	115 Days after Event 3	40 Days after Event 3
5. Final Dumping Subsidy Determination by DOC	75 Days after Event 4	75 Days after Event 4
6. Final Dumping/Subsidy Determination by ITC	Later of: 120 Days after Event 4 or 45 Days after Event 3	Laterof: I20 Days after Event 4 or 45 Days after Event 3
7. Issuance of Orders	7 Days after Event 6	7 Days after Event 6

There is overlap in some of these stages. With the exception of Commerce's preliminary determination (stage 4), a negative determination by either Commerce or the Commission results in a termination of proceedings at both agencies.



Source: USITC Antidumping and Countervailing Duty Handbook. <a href="https://www.usitc.gov/trade\_remedy/adcvd\_handbook.htm">https://www.usitc.gov/trade\_remedy/adcvd\_handbook.htm</a>



#### ANTIDUMPING AND COUNTERVAILING

CHRONOLOGY OF EVENTS - THE PLAYERS, PROCESS, AND TIMELINES

When does suspension of liquidation and collection of AD/CVD begin?

Suspension of liquidation of entries and collection of AD/CVD cash deposits (provisional measures) begin at the first affirmative Commerce determination in the AD/CVD investigation. This is usually at the time of Commerce's preliminary determination. At that time, Commerce will instruct CBP to suspend liquidation and collect cash deposits (i.e., provisional measures) beginning on the date its determination is published in the Federal Register. If, however, Commerce has found that critical circumstances exist, it will instruct CBP to suspend liquidation and collect cash deposits beginning 90 days prior to the date its determination is published in the Federal Register.

Provisional measures expire (i.e., duties will no longer be collected by CBP) after they have been in place for 120 days. For AD cases, this period may be extended up to 180 days. Suspension of liquidation and duty collection by CBP will resume if Commerce publishes an AD/CVD order.

Antidumping and Countervailing Duties (AD/CVD) Frequently Asked Questions | U.S. Customs and Border Protection (cbp.gov)





## ANTIDUMPING AND COUNTERVAILING NEW FLAGS FOR EAPA EVASION AND INJUNCTIONS

# Information Notice

AD/CVD Flags for EAPA Evasion and Injunctions Last updated: December 23, 2020



On January 16, 2021, U.S. Customs and Border Protection (CBP) will deploy to the Automated Commercial Environment (ACE) the Antidumping and Countervailing Duty (AD/CVD) indicator flags for Enforce and Protect Act (EAPA) investigation and court injunction actions.

This capability will provide trade users with two new suspension/extension codes that indicate whether an Entry Summary is subject to EAPA investigation or a court injunction action. This enhancement includes Electronic Data Interchange (EDI) impacts.

#### Reference:

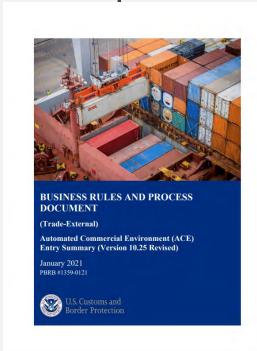
<u>Trade\_Information Notice\_ADCVD Flags for EAPA Evasion and Injunctions (cbp.gov)</u> <a href="https://www.cbp.gov/trade/trade-enforcement/tftea/eapa">https://www.cbp.gov/trade/trade-enforcement/tftea/eapa</a>





#### ANTIDUMPING AND COUNTERVAILING

#### **TERMINOLOGY**



#### 9.9 AD/CVD Terms

The following ACE terms are found in the Search AD/CVD Case "Company Status" field (i.e., 10-digit level company case page). The Department of Commerce (Commerce) populates this information through the AD/CVD Case Reference File (CRF) within ACE. In the definitions below, unless otherwise specified, "company" may refer to a single company (or group-entity) designated as an exporter, a producer, or a specific producer/exporter combination.

**Note**: This information is used for cash deposit purposes only. Merchandise may be entered under a specific case number with an assigned cash deposit rate, but may be liquidated at a different AD or CVD rate.

Active: This case number is active and entries may be made under it.

When Commerce adds a 10-digit company-specific case number (including the -000 case number) in ACE, the company status field will indicate "Active." This indicates that the company has an active company-specific case number under that AD/CVD proceeding. With respect to the -000 case number, that means there is an active "all others" case number in a market economy proceeding and an active "country-wide entity" case number in a nonmarket economy proceeding.

Reference: <u>Business Rules and Process Document (Trade-External) ACE Entry Summary (Version 10.25) December 2020 (cbp.gov)</u>





## ANTIDUMPING AND COUNTERVAILING TERMINOLOGY

"Alloy designations...which are considered alloys in the trade and referred to as alloys in the scope... are actually not classifiable as alloys for tariff purposes but are alloys for scope purposes."

-- CBP Aluminum Extrusions presentation, Sept.12 2012





#### ANTIDUMPING AND COUNTERVAILING

#### **COUNTRY OF ORIGIN**

#### **HQ H300226**

September 13, 2018

Modification of NY N299096; country of origin of electric motors from Mexico; 2018 Section 301 trade remedy; 9903.88.01, HTSUS

Significance: Although a motor assembled in Mexico from Chinese components met the Tariff Shift Test for Country of Origin marking purposes, the components did not undergo <u>substantial</u> <u>transformation</u>, and thus 301 Duties had to be paid on the assembled motor.

#### N302747

March 12, 2019

"While the NAFTA marking rules contained in 19 C.F.R. Part 102 will determine the country of origin for marking purposes, the substantial transformation test will determine the country of origin for purposes of applying current trade remedies under Section 301, Section 232, and Section 201..." and... "antidumping, countervailing, or other duties, fees and charges that apply to such products...





### ANTIDUMPING AND COUNTERVAILING SCOPE – A GENERAL PRINCIPLE

processes used to transform the upstream into the downstream articles. The Commission generally does not define the domestic like product to include downstream articles that are not included in the scope of the investigation.

Once the Commission determines the demostic like product in a particular investigation

Source: USITC Antidumping and Countervailing Duty Handbook. <a href="https://www.usitc.gov/trade\_remedy/adcvd\_handbook.htm">https://www.usitc.gov/trade\_remedy/adcvd\_handbook.htm</a>





# ACCURATE HTS CLASSIFICATION IS CRITICAL

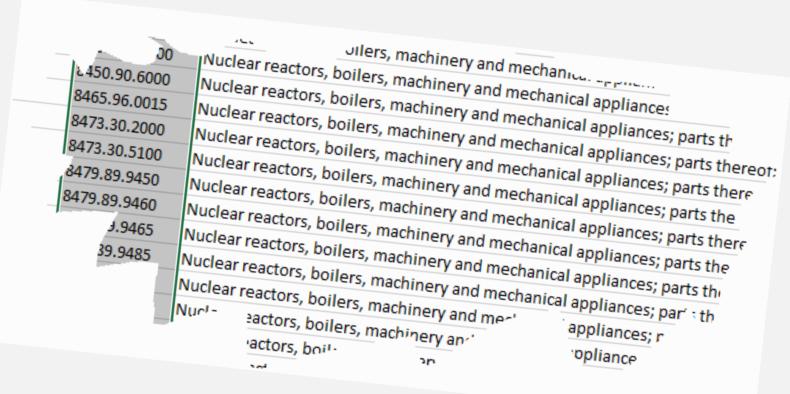
"...an HTS code is only provided for convenience since the narrative description of the scope of an AD/CVD case is dispositive and the description and nature of the goods are what determine if the item is within the scope of an AD/CVD case."





# ACCURATE HTS CLASSIFICATION IS CRITICAL

Over 2,000 10-digit HTS Classifications flag for AD/CV







#### BEWARE THE 10-DIGIT HTS SEARCH!

• 8414.59.6560 (Current HTS) Search 2/2/2021

Message #	Case Number & Short Case Name	Status	Message Date	Туре	Subty
				- No records to display -	





#### BEWARE THE 10-DIGIT HTS SEARCH!

• 8414.59.6060 (Deprecated HTS) Search 2/2/2021

(x)					
Message #	Case Number & Short Case Name	Status	Message Date	Туре	Subtype
9231308	C570968 Aluminum Extrusions	Active	08/19/2019	FIN-Final Determination	AFF- Affirmative
9231313	A570967 Aluminum Extrusions	Active	08/19/2019	FIN-Final Determination	AFF- Affirmative





"ACE is the system of record for all AD/CVD case information and Department of Commerce, Enforcement and Compliance (formerly known as Import Administration (DOC/EC) and CBP Enforce and Protect Act (EAPA) and associated entries."

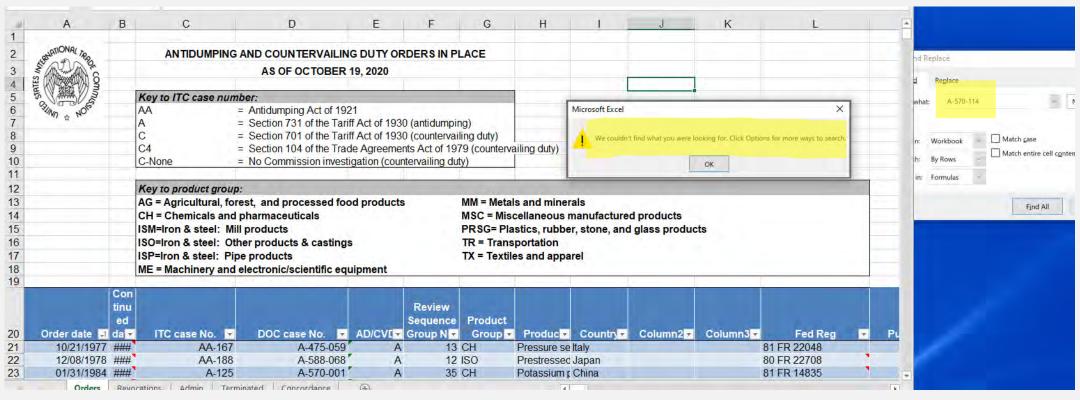
Source: Chapter 9 in Automated Commercial Environment (ACE) Entry Summary (Version 10.25 Revised) January 2021, PBRB #1359-0121

https://www.cbp.gov/sites/default/files/assets/documents/2021-Jan/ACE%20Entry%20Summary%20Business%20Rules%20and%20Process%20Document%20Trade%20Version%2010.25%20Revised.pdf





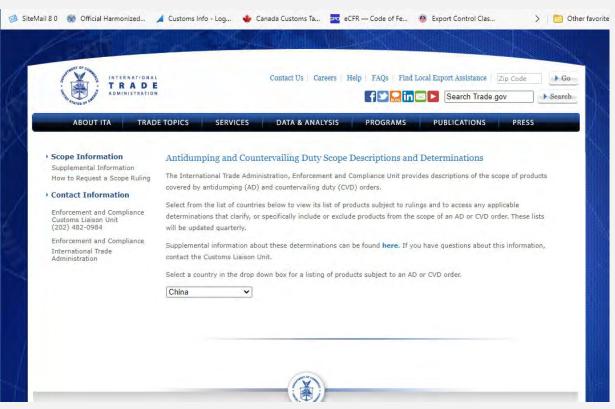
#### HANDY BUT NOT ALWAYS COMPLETE

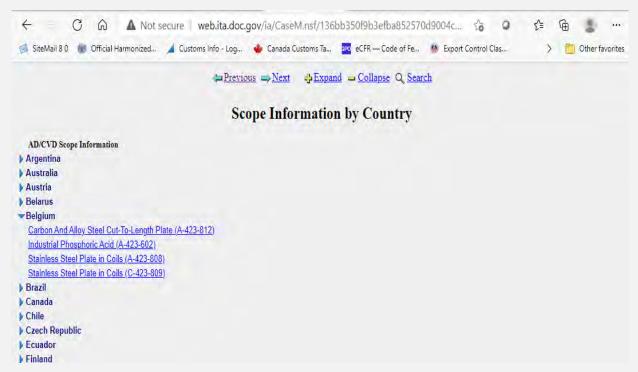






#### HANDY BUT NOT ALWAYS COMPLETE



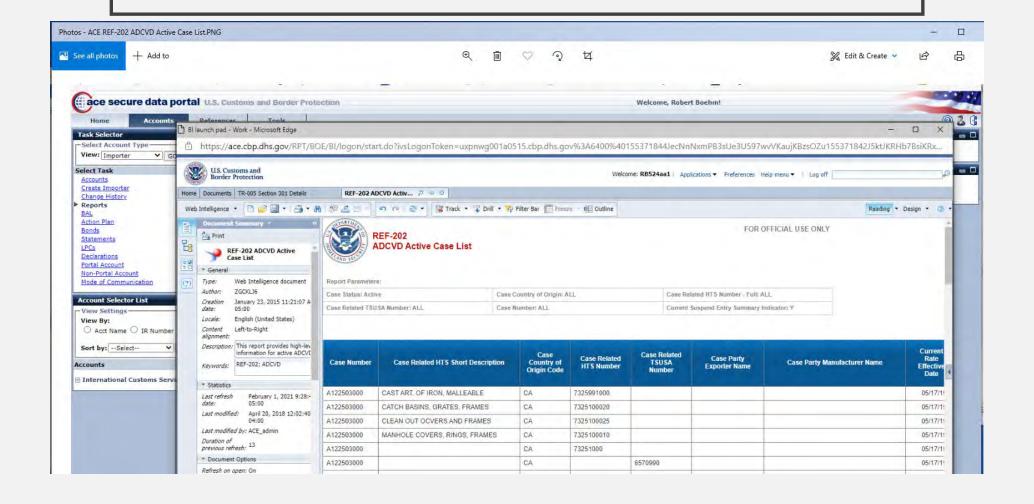


Scope Information by Country (doc.gov)



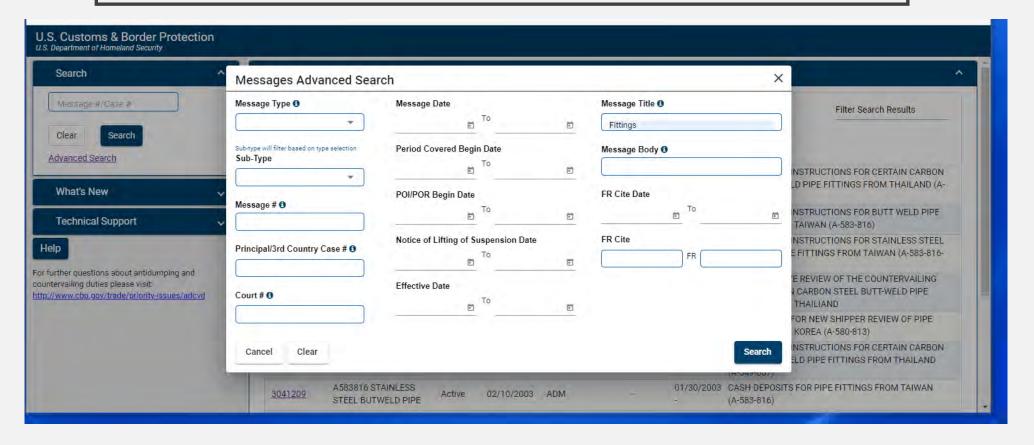






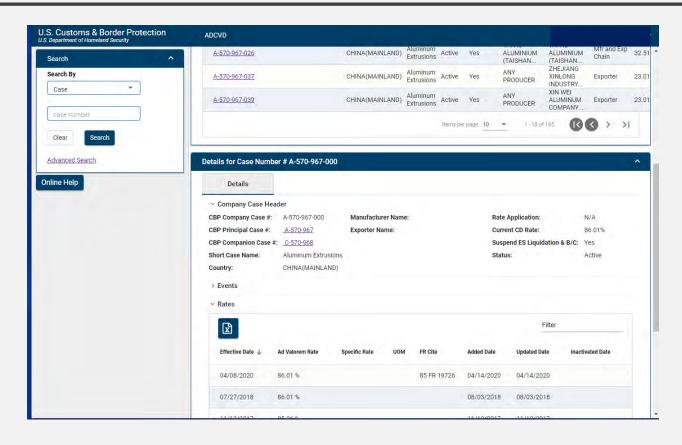






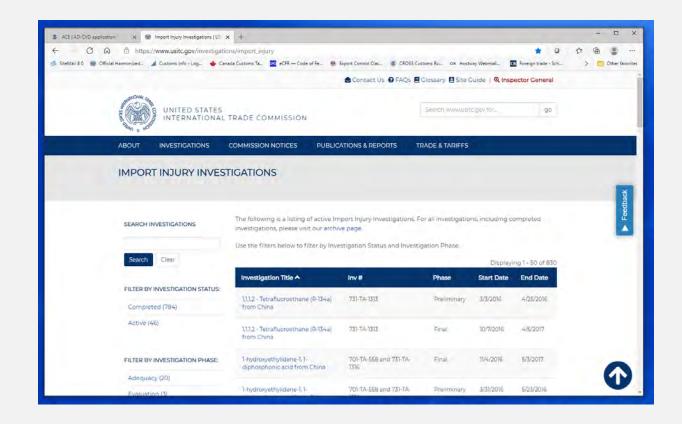






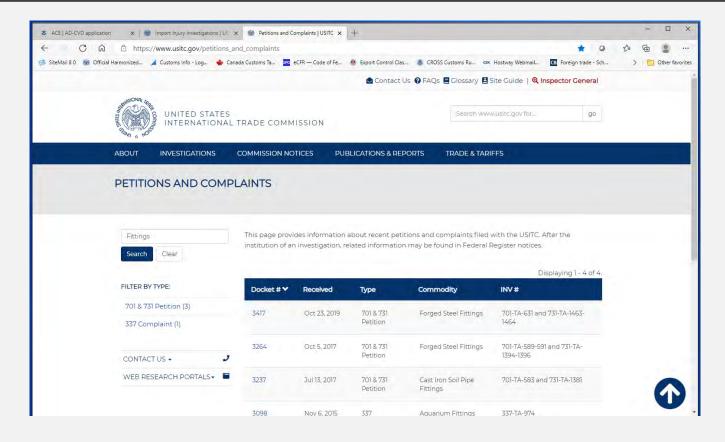






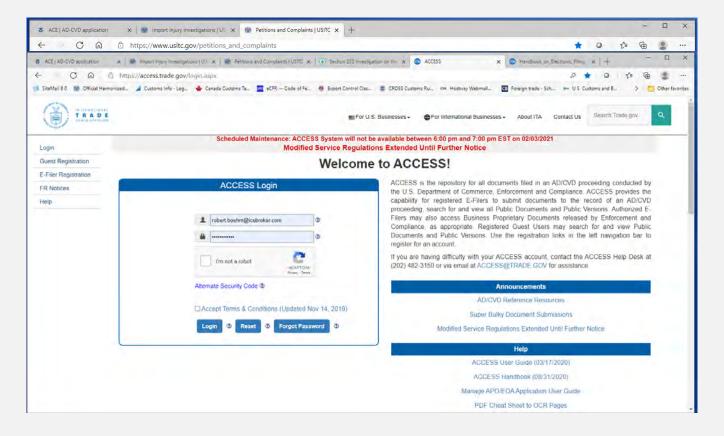
















#### ANTIDUMPING AND COUNTERVAILING

SEARCH RECOMMENDATIONS

#### **General Recommendations:**

- Cast a wide net try a 6-digit HTS.
- Use multiple databases and sources, they all display information differently and you will see different possibilities.
- Always include ACE in your searches!
- Consider your product from different angles.
- Look for scope rulings for similar products
- Look "Upstream"
- Wake up at 3 in the morning, and ask yourself, "What did I miss?"

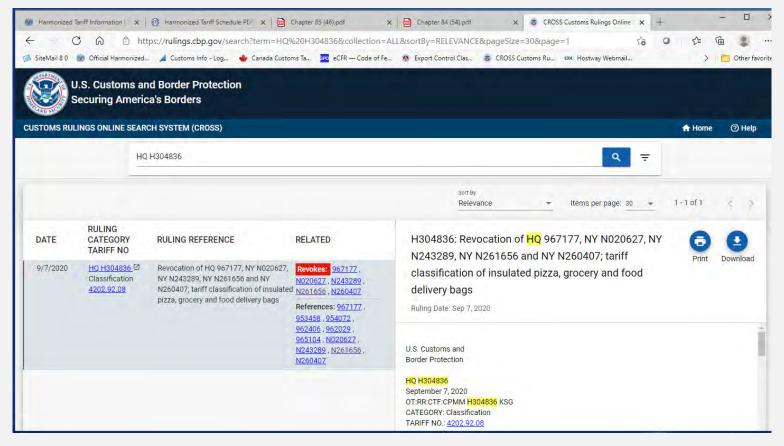
#### Consider your product from different angles:

- Manufacturer name
- Exporter name
- HTS, including other possible HTS
- Descriptions, synonyms
- Where used
- Material HTS
- Manufacturing Process
- Country of Origin (of assembly and parts)
- Country of Export
- Accessory, "Parts of", Sub-assembly, Finished Good?
- Shipping assembled? With or separate from related parts?



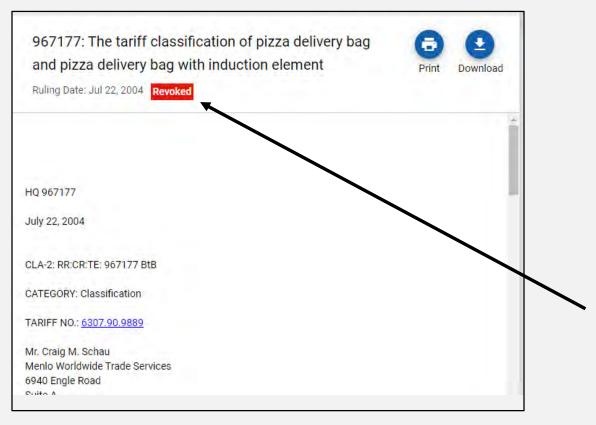
# ANTIDUMPING AND COUNTERVAILING INVESTIGATIONS; NEW CUSTOMS RULINGS















962406: Pizza Delivery Bags; SGI, Incorporated v. United States, 122 F.3d 1468 (Fed. Cir. 1997); 4202, HTSUS; 6307.90.9989 HTSUSA



Download

Ruling Date: Jul 22, 1999

#### HQ 962406

July 22, 1999

CLA-2 RR:CR:TE 962406 SS

CATEGORY: Classification

TARIFF NO.: 6307.90.9989

Thomas J. O'Donnell, Esquire O'Donnell, Byrne & Williams 20 North Wacker Drive, Suite 1416 Chicago, Illinois 60606





Ruling Date: Apr 20, 2005

CATEGORY: Classification

TARIFF NO.: 3917.40.0090

Mr. Mike Kearby Sitting Goat Ranch 5047 FM 207 Caddo, TX 76429

RE: The tariff classification of a plastic pipe fitting from China.

Dear Mr. Kearby:

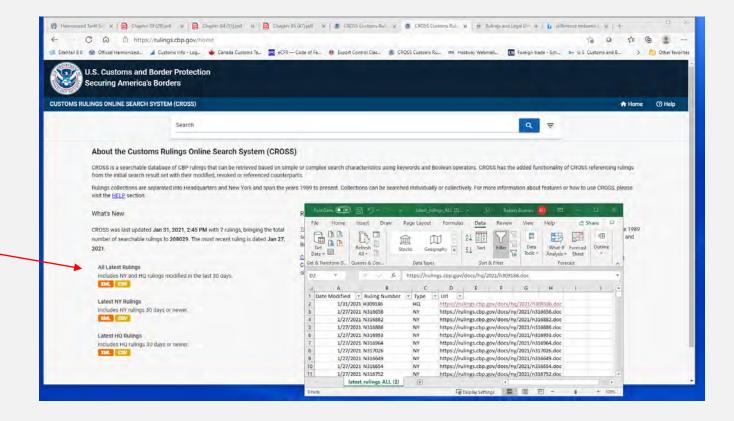
In your letter dated April 12, 2005, you requested a tariff classification ruling.

A sample was provided with your letter. The pipe fitting is a riser or extension that combines both male and female threaded pipe segments for connection to pre-molded male or female sprinklers. The pipe fitting is composed of polyethylene plastic.

The applicable subheading for the plastic pipe fitting will be 3917,40.0090, Harmonized Tariff
Schedule of the United States (HTS), which provides for tubes, pipes and hoses and fittings therefor (for example, joints, elbows, flanges), of plastic...fittings, other. The rate of duty will be 5.3 percent ad valorem.

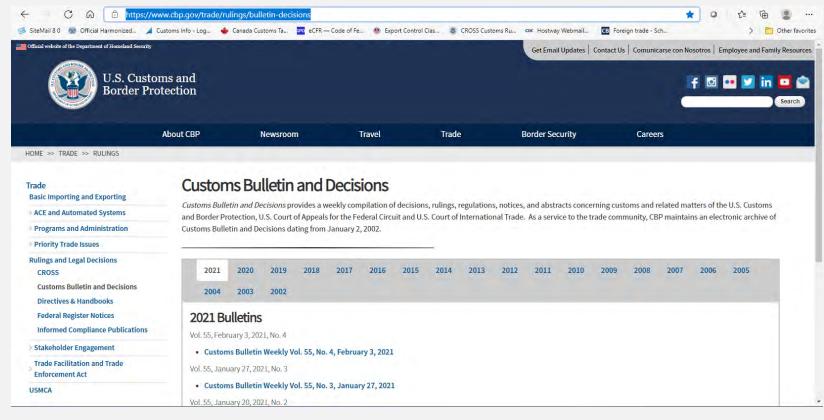
















#### RULINGS BEST PRACTICES - CHECKING FOR CHANGES

- Check your supporting Rulings during the course of entering annual Certificate updates for items of significant cost.
- Check the Heading language in the Ruling...is it still the same?
- Monitor new Rulings and Bulletins for anything that could affect a large order with a long lead time, or before a placing a large repeat order.



#### F

# A NEW FREE TRADE AGREEMENT: USMCA



#### USMCA

PERIOD OF RESTRAINED ENFORCEMENT ENDED 12/31/2020

#### CSMS #45309245 - USMCA - Consolidated Appropriations Act 2021 & End of Restrained Enforcement

12/29/2020



#### Cargo Systems Messaging Service

CSMS #45309245 - USMCA - Consolidated Appropriations Act 2021 & End of Restrained Enforcement

This message is to inform the Trade Community of the following U.S. – Mexico – Canada Agreement (USMCA) updates:

Consolidated Appropriations Act of 2021



### FREE TRADE AGREEMENTS

**END-TO-END PROCESSES** 

- Solicit Suppliers
- Data Entry
- Analyze Bills of Material (BOMs) per the appropriate Rules of Origin
- Issue Certificates to claim eligibility
- Post-Entry Audit





### FREE TRADE AGREEMENTS

**END-TO-END PROCESSES** 

- Efficient
- Integrated
- Automated
- Flexible
- Fast





#### **VENDOR SOLICITATION**

	itation Solicita	tion Jobs Active	Solicitation	Jobs Single	Solicitation					
Step 1										
Entities:	Quic	Code: Supplie		er Name:	Countries:	Countries:				
ICS-MX	~				ALL	~	Filter			
	ā	Supplier	Name		SupplierNo	Q	uickCode		Country	
<b>✓</b> 52255		KELE COMPANY		12		KELE		US		
52238		PELCO		27715		ABB		US		
52212		AIRGAS		2254		AIRGAS		US		
52213		ALPHA		22359		ALPHA		MX		
52214		ALTOS HORNOS DE	MEXICO	33856		ALTOS HORNO	S	MX		
✓ 52215 ✓ 52216		ARCELOR MITTAL  ARROW ELECTRONIC	0.110	13		ARCELOR ARROW ELECT		FR		
Step 2										Next >>
Siep 2										
Year:	2021				Certificates	to send:				
						ican Certificate				-
From Date:	01/01/2021	<b>m</b>			Certificat	introl Classification of Origin/FTA urer's Affidavit	on Number			
To Date:	12/31/2021	<b>m</b>			Other Food and	Drug Association	1			





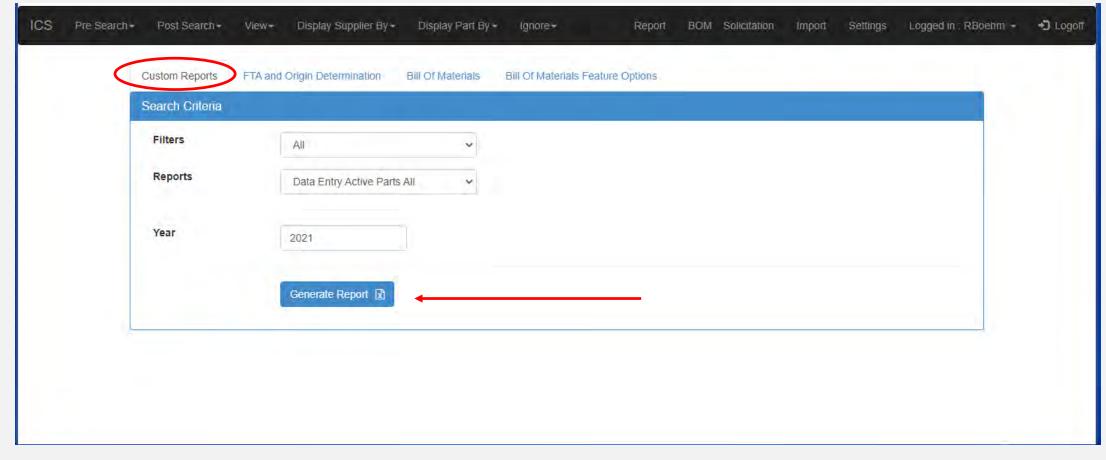
#### **VENDOR SOLICITATION**

	itation Solicita	tion Jobs Active	Solicitation	Jobs Single	Solicitation					
Step 1										
Entities:	Quic	Code: Supplie		er Name:	Countries:	Countries:				
ICS-MX	~				ALL	~	Filter			
	ā	Supplier	Name		SupplierNo	Q	uickCode		Country	
<b>✓</b> 52255		KELE COMPANY		12		KELE		US		
52238		PELCO		27715		ABB		US		
52212		AIRGAS		2254		AIRGAS		US		
52213		ALPHA		22359		ALPHA		MX		
52214		ALTOS HORNOS DE	MEXICO	33856		ALTOS HORNO	S	MX		
✓ 52215 ✓ 52216		ARCELOR MITTAL  ARROW ELECTRONIC	0.110	13		ARCELOR ARROW ELECT		FR		
Step 2										Next >>
Siep 2										
Year:	2021				Certificates	to send:				
						ican Certificate				-
From Date:	01/01/2021	<b>m</b>			Certificat	introl Classification of Origin/FTA urer's Affidavit	on Number			
To Date:	12/31/2021	<b>m</b>			Other Food and	Drug Association	1			





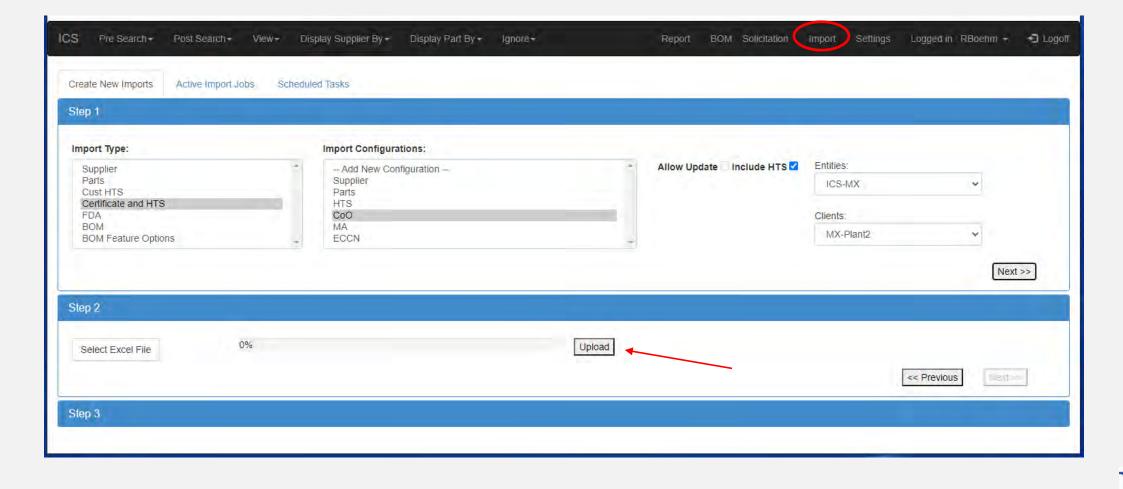
#### DATA ENTRY







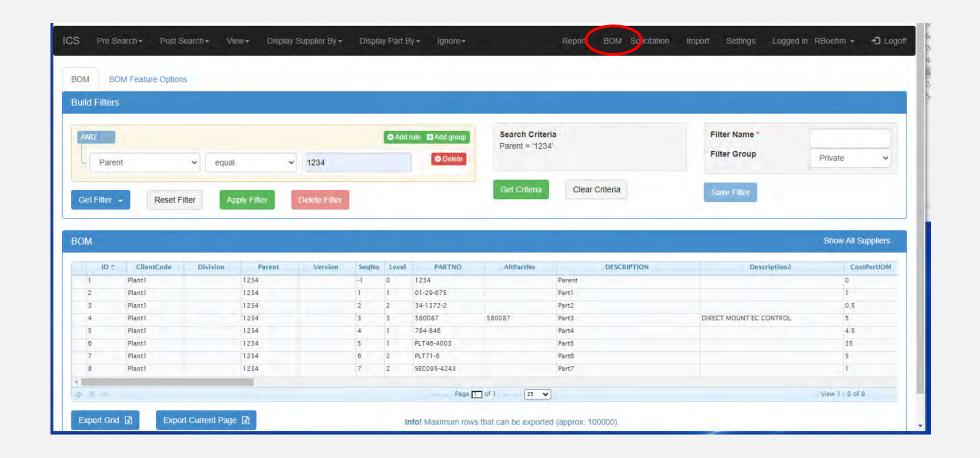
#### DATA ENTRY







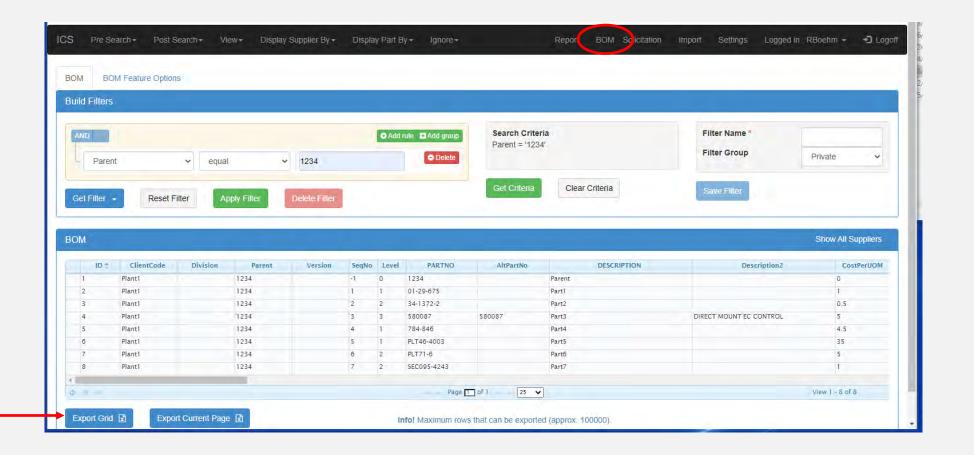
#### **BOM ANALYSIS**







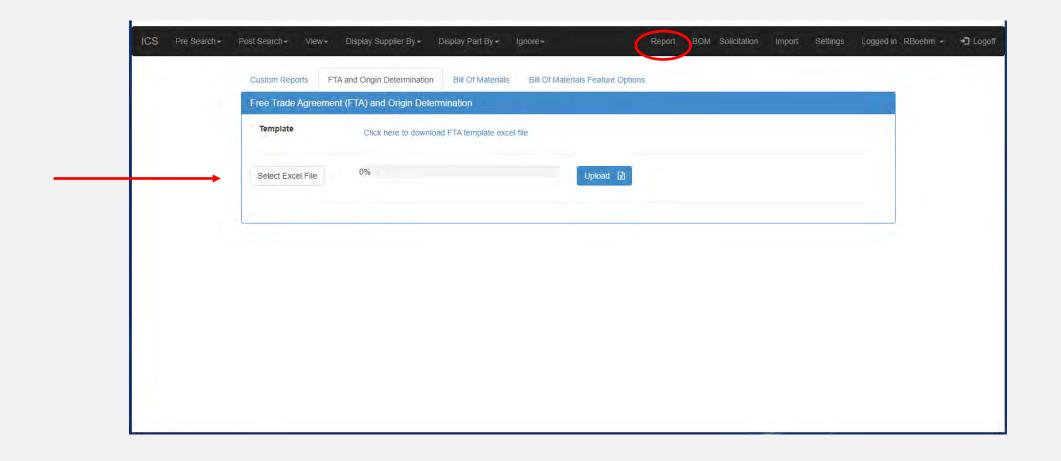
#### **BOM ANALYSIS**







#### **BOM ANALYSIS**







#### USMCA BOM ANALYSIS 101

- The person analyzing the BOM will also need access to drawings, diagrams, photos, specifications, etc.
- Refer to Rules of Origin in the HTS General Note 11.
- Identify Phantoms and understand what they represent.
- Understand Intermediate Materials, they are handled the same in USMCA as they were in NAFTA.
  - <a href="https://www.cbp.gov/document/fact-sheets/usmca-intermediate-materials">https://www.cbp.gov/document/fact-sheets/usmca-intermediate-materials</a>
  - <a href="https://www.cbp.gov/trade/nafta/guide-customs-procedures/other-instances-confer-origin/intermediate-materials">https://www.cbp.gov/trade/nafta/guide-customs-procedures/other-instances-confer-origin/intermediate-materials</a>
- Check Deminimis and the Exceptions to Deminimis in HTS General Note 11. USMCA differs from NAFTA.
- File finished BOMs and save them with your Certifications. You will be able to issue Certifications with a high degree of confidence and be well-positioned to answer any inquiries to support your Certification. Plus, they can be used to self-audit for process improvement, identifying gaps etc.
- Make sure any new determinations are added to the system to decrease future analysis time.





#### ISSUING CERTIFICATIONS

The United States-Mexico-Canada Agreement  Certificate of Origin IMPORTER	
EXPORTER  La Planket Period:	
FROM (mm/dd/yyyy):	
PLACE OF LX	
4. Producer: ADDRESS MUST BE ADDRESS MUST BE PLACE OF PRODUCTION  7. HS Number  8. COO 9. Origin Criterian 7. HS Number	
PLACE OF The 7. HS Number 1. HS	





#### **FLEXIBILITY**





# CHAMBER-ATTESTED E-CERTIFICATIONS



## PREPARE DOCUMENTS FOR ELECTRONIC ATTESTATION

#### **Before you Issue:**

- Explain the lockdown situation to your customer, and have them check with their forwarder/broker to make sure they will accept electronically attested Documents.
- Explain the electronic process does not allow Notarization, which is a process that can only be done in person.
- Ask if they will accept an emailed PDF. Don't be surprised if some still insist on you making a
  paper print out and shipping it to them. Just figure out who will be paying for that up front if
  shipped separately.
- Know that Legalized documents cannot be electronically chamber-attested.





### PREPARE DOCUMENTS FOR ELECTRONIC ATTESTATION

#### **Document Set-up:**

- The platform may have canned versions of Certificate of Origins and Commercial Invoices that you can use, but most customers just prefer to use their own forms. Check with your local Chamber to see if they can accommodate your company's forms.
- Use as large a Font Size as possible when creating your documents to make sure the final attested documents are legible. (These documents will go down a couple of generations in quality throughout this process). 12 or 14 pt is good, you can get away with 10 pt.
- Leave some space at the bottom of the documents (it doesn't have to be huge, a couple of inches will do) for the Chamber to add their stamp, signature and date.
- Find out where the Chamber will add their Control Number, so you know where to position logos and text on the Form). (i.e., the Chamber with which we work puts their Control Number on the top left of the document, so we either have the stationery logo in the Center or Top Right.





#### **THANK YOU!**



Compliance • Experienced • Specialized • Value Driven

www.icsbroker.com

N64 W24801 MAIN STREET, SUITE 121, SUSSEX WI 53809 PH: 262-820-2700

Rob Boehm, LCB, Trade Compliance Analyst

robert.boehm@icsbroker.com

For general inquiries: Aleda Bourassa, CGBP, Business Development Manager <u>Aleda.bourassa@icsbroker.com</u>