

30 days after publication of these rules. The EDGAR system upgrade to Release 9.10 is scheduled to become available on May 5, 2008. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,⁸ Sections 3, 12, 13, 14, 15, 23, and 35A of the Exchange Act,⁹ Section 319 of the Trust Indenture Act of 1939,¹⁰ and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.¹¹

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T— GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

- 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

- 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: “General Information,” Version 4 (August 2007). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: “EDGAR Filing,” Version 8 (June, 2008). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: “N–SAR

Supplement,” Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m., or by calling Thomson Financial at (800) 638–8241. Electronic copies are available on the Commission’s Web site. The address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

By the Commission.

Dated: June 4, 2008.

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8–12961 Filed 6–11–08; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

[CBP Dec. 08–21]

RIN 1505–AB90

Articles Assembled Abroad: Operations Incidental to the Assembly Process

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (“CBP”) Regulations in title 19 of the Code of Federal Regulations (19 CFR) in order to remove a provision that draws a distinction between preservative and decorative painting for purposes of the partial duty exemption under

subheading 9802.00.80, Harmonized Tariff Schedule of the United States (“HTSUS”). The change is made to conform the CBP Regulations with the holding of a court decision in which the regulatory distinction between preservative and decorative painting was found to be invalid.

DATES: Final rule effective July 14, 2008.

FOR FURTHER INFORMATION CONTACT:

Gerry O’Brien, Regulations and Rulings, Office of International Trade, (202) 572–8792.

SUPPLEMENTARY INFORMATION:

Background

Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (“HTSUS”), 19 U.S.C. 1202, provides a partial duty exemption for articles assembled abroad in whole or in part of fabricated components, the products of the United States, which: (a) Were exported in condition ready for assembly without further fabrication; (b) have not lost their physical identity in such articles by change in form, shape, or otherwise; and, (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process, such as cleaning, lubricating, and painting. The regulations implementing subheading 9802.00.80, HTSUS, are found within §§ 10.11 through 10.26 of title 19 of the Code of Federal Regulations (19 CFR 10.11–10.26).

Section 10.13 of title 19 of the CFR (19 CFR 10.13) provides that articles that satisfy the requirements of subheading 9802.00.80, HTSUS, are subject to a duty upon the full value of the imported article, less the cost or, if no charge is made, the value of such products in the United States. The rate of duty that is assessed on an imported article eligible for the partial duty exemption under subheading 9802.00.80, HTSUS, is that which is applicable to the imported article as a whole under the appropriate HTSUS provision for such article.

Section 10.16 of title 19 of the CFR (19 CFR 10.16) concerns the assembly operations for purposes of subheading 9802.00.80, HTSUS. Section 10.16(b) sets forth general information regarding operations considered incidental to the assembly process. Under § 10.16(b), operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and will not preclude the application of the exemption. Examples of operations considered incidental to the assembly process are provided under

⁸ 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

⁹ 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

¹⁰ 15 U.S.C. 77sss.

¹¹ 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

§§ 10.16(b)(1)–(7). The application of preservative paint or coating, including preservative metallic coating, lubricants, or protective encapsulation is currently considered an operation incidental to the assembly process under § 10.16(b)(3).

Section 10.16(c) sets forth general information regarding operations that are not considered incidental to the assembly process. Under § 10.16(c), any significant process, operation, or treatment other than assembly whose primary purpose is the fabrication, completion, physical or chemical improvement of a component, or which is not related to the assembly process, whether or not it effects a substantial transformation of the article, will not be regarded as incidental to the assembly process and will preclude the application of the duty exemption to the article. Examples of operations that are not considered incidental to the assembly process are set forth under §§ 10.16(c)(1)–(5). Pursuant to § 10.16(c)(3), painting primarily intended to enhance the appearance of an article or to impart distinctive features or characteristics is not currently considered an operation incidental to the assembly process.

As indicated, § 10.16 currently draws a distinction between preservative and decorative painting for purposes of the partial duty exemption under subheading 9802.00.80, HTSUS: Painting operations performed abroad that are deemed to be “preservative” in nature are considered incidental to the assembly process under § 10.16(b)(3) and will not preclude application of the partial duty exemption under subheading 9802.00.80, HTSUS; and, painting operations performed abroad that are deemed to be “decorative” in nature are not considered incidental to the assembly process under § 10.16(c)(3) and will preclude application of the partial duty exemption under subheading 9802.00.80, HTSUS.

Explanation of Amendments

In *DaimlerChrysler Corporation v. United States*, 361 F.3d 1378 (Fed. Cir. 2004), the United States Court of Appeals for the Federal Circuit considered the issue of whether § 10.16 was valid to the extent that the regulation draws this distinction between preservative and decorative painting for purposes of the partial duty exemption under subheading 9802.00.80, HTSUS. In that case, DaimlerChrysler Corporation assembled trucks in Mexico with sheet metal components from the United States. The sheet metal components were initially treated with primer coats designed to

prevent corrosion. After heat treatment, color coats and clear coats, referred to as “top coats”, were applied to the sheet metal components.

Customs and Border Protection (“CBP”) considered the primer coats to be preservative in nature and, consequently, determined that the application of the primer coats was an operation incidental to the assembly process under § 10.16(b)(3). However, CBP considered the top coats to be decorative in nature because they were intended primarily to enhance the appearance of the trucks. Because CBP did not consider application of the top coats to be an operation incidental to the assembly process pursuant to § 10.16(c)(3), these operations were not eligible for a partial duty exemption under subheading 9802.00.80, HTSUS.

Upon considering this particular issue on appeal, the U.S. Court of Appeals for the Federal Circuit held that subheading 9802.00.80, HTSUS, unambiguously provides that painting is an operation incidental to the assembly process. Therefore, the court determined that the distinction between preservative and decorative painting set forth in § 10.16 is invalid.

In order to implement the court’s interpretation of subheading 9802.00.80, HTSUS, CBP is amending § 10.16 so as to eliminate the distinction in the regulation between preservative and decorative painting. Section 10.16(b)(3) is amended to provide that applying paint or preservative coating, including preservative metallic coating, lubricants, or protective encapsulation, constitutes an operation incidental to the assembly process for purposes of subheading 9802.00.80, HTSUS. In addition, this document removes from the regulations § 10.16(c)(3), which currently provides that painting primarily intended to enhance the appearance of an article, or to impart distinctive features or characteristics, is not considered an operation incidental to the assembly process. Sections 10.16(c)(4) and (c)(5) are redesignated as §§ 10.16(c)(3) and (c)(4), respectively.

The amendments conform the regulations to reflect the decision issued by the United States Court of Appeals for the Federal Circuit in *DaimlerChrysler Corporation v. United States* by removing from § 10.16 the distinction between preservative and decorative painting. Under the amendments, for example, the application of primer coats and top coats will both be considered incidental to the assembly process for purposes of the partial duty exemption under subheading 9802.00.20, HTSUS. Finally, this document amends §§ 10.16(b) and

(c) by removing the word “shall” each place it appears and adding, in its place, the word “will”.

Inapplicability of Prior Public Notice

This document deletes from the regulations a provision determined to be invalid by the United States Court of Appeals for the Federal Circuit and benefits the public by expanding the scope of painting operations that will be considered incidental to the assembly process and thus eligible for a partial duty exemption under subheading 9802.00.80, HTSUS. For these reasons, CBP has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 10

Assembly, Customs duties and inspection, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the CBP Regulations

■ For the reasons set forth above, part 10 of title 19 of the Code of Federal Regulations (19 CFR part 10) is amended as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

■ 2. In § 10.16:

■ a. In paragraph (b), the introductory paragraph and paragraph (b)(3) are revised;

■ b. In paragraph (c), the introductory text is amended by removing the word “shall” each place it appears in the first

sentence and adding, in its place, the word “will”;

- c. Paragraph (c)(3) is removed; and
- d. Paragraphs (c)(4) and (c)(5) are redesignated as paragraphs (c)(3) and (c)(4), respectively.

The revisions read as follows:

§ 10.16 Assembly abroad.

* * * * *

(b) *Operations incidental to the assembly process.* Operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and will not preclude the application of the exemption. The following are examples of operations which are incidental to the assembly process:

* * * * *

- (3) Application of paint or preservative coating, including preservative metallic coating, lubricants, or protective encapsulation;

* * * * *

Approved: June 6, 2008.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.
[FR Doc. E8–13203 Filed 6–11–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9398]

RIN 1545–BD70

Partner’s Distributive Share; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains a correction to final regulations (TD 9398) that were published in the **Federal Register** on Monday, May 19, 2008 (73 FR 28699) providing rules for testing whether the economic effect of an allocation is substantial within the meaning of section 704(b) where partners are look-through entities or members of a consolidated group. The final regulations clarify the application of section 704(b) to partnerships the interests of which are owned by look-through entities and members of consolidated groups and, through an example, reiterate the effect of other

provisions of the Internal Revenue Code on partnership allocations.

DATES: This correction is effective *June 12, 2008*, and is applicable on May 19, 2008.

FOR FURTHER INFORMATION CONTACT:

Jonathan E. Cornwell and Kevin I. Babitz at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 704 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9398) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

- Accordingly, the publication of the final regulations (TD 9398), which were the subject of FR Doc. E8–11176, is corrected as follows:

On page 28701, column 2, in the preamble, under the paragraph heading “*B. The Baseline for Comparison in § 1.704–1(b)(2)(iii)*”, line 2 from the bottom of the second paragraph, the language “and (2) and the conclusions reached by” is corrected to read “and (2) and the conclusions reached by”.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–13251 Filed 6–11–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9398]

RIN 1545–BD70

Partner’s Distributive Share; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9398) that were published in the **Federal Register** on Monday, May 19, 2008 (73 FR 28699) providing rules for testing whether the economic effect of an allocation is substantial within the meaning of section 704(b) where

partners are look-through entities or members of a consolidated group. The final regulations clarify the application of section 704(b) to partnerships the interests of which are owned by look-through entities and members of consolidated groups and, through an example, reiterate the effect of other provisions of the Internal Revenue Code on partnership allocations.

DATES: This correction is effective June 12, 2008, and is applicable on May 19, 2008.

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SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 704 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9398) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

- Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

- **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

- **Par. 2.** Section 1.704–1 is amended as follows:

1. In paragraph (b)(2)(iii)(d)(3), the last sentence, the language “In the case of a controlled foreign corporation that is a look-through entity, the tax attributes to be taken into account are those of any person that is a United States shareholder (as defined in paragraph (b)(2)(iii)(d)(5) of this section) of the controlled foreign corporation, or, if the United States shareholder is a look-through entity, a United States person that owns an interest in such shareholder directly or indirectly through one or more look-through entities.” is removed and the language “In the case of a controlled foreign corporation that is a look-through entity, the tax attributes to be taken into account are those of any person that is a United States shareholder (as defined