Comments submitted via the Federal eRulemaking Portal: http://www.regulations.gov

August 3, 2021

Ms. Queena Fan
Director, USMCA Center, Office of Trade
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Mr. Craig T. Clark
Director, Commercial and Trade Facilitation Division
Regulations and Rulings, Office of Trade
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
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Subject: Proposed Rule - Non-Preferential Origin Determinations for Merchandise Imported from Canada or Mexico for Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)

Reference: Docket Number USCBP-2021-0025, 86 FR 35422, RIN 1515-AE63

Dear Ms. Fan and Mr. Clark:

Cisco Systems, Inc. (Cisco), is a leader in the development of IP-based networking technology in core areas such as routing and switching, as well as advanced technologies in the areas of data center solutions; IP telephony; optical networking; network security; storage networking; and wireless local area networking. Cisco customers include businesses of all sizes, public institutions, telecommunications companies, other service providers and individuals.

Cisco is continuously monitoring its manufacturing footprint, with a focus on fulfillment of product intended for sale to the federal government. Over the past several years we've implemented a significant restructuring of our business and our supply chain, premised in part on the Advisory Rulings and Final Determinations received from CBP. Reliance on these decisions has also allowed Cisco to move significant portions of our product portfolio out of China to the U.S. and Mexico. CBP's proposed regulation threatens this strategy and investment, as the manufacturing process described in our rulings would not meet the applicable tariff shift rule of Part 102. As a result, we will be required to move production to a TAA eligible location other than Mexico or Canada. Moreover, in this case and cases like it, adopting this rule would seem counter to the intent of USMCA to promote regional manufacturing; it would drive manufacturing out of the region.

In the "Background and Purpose of Rule" portion of the NPRM, CBP states: "Both the case-by-case and tariff shift methods implement the substantial transformation standard and are intended to lead to the same result." The statement may be true as far as intent, but the two methods do not always yield the same result. CBP received comments to this effect in response to a 2008 NPRM, USCBP-2007-0100, in which CBP proposed that the Part 102 rules be used to determine substantial transformation for all origin determinations. Comments were overwhelmingly negative, and a number of the comments pointed out situations in which results would be different under the two standards—just as is the case with us. After extending the comment period and receiving additional feedback, CBP abandoned the proposal in 2011.

This time the proposal relates only to exports from Canada and Mexico, but the issues with differing results remains unaddressed. Consequently, we face the same issue. Some of our products which are assembled in Mexico meet the substantial transformation rule, yet would not meet the tariff shift rule specified in Part 102. As a result, if this rule became final, in order to continue to supply the federal government with any of these products, we would be required to move production to a TAA eligible country other than Canada and Mexico. Our strategy of on-shoring and near-shoring our manufacturing footprint would be severely disrupted if CBP adopts this rule. Aside from needing to replicate our investment, ongoing logistics costs would certainly increase, as would our carbon footprint, if Mexico and Canada are precluded from consideration as manufacturing locations.

In reality, the Part 102 rules are surrogates for the substantial transformation test. The Part 102 rules may provide identical results in many, or even most cases, but a Part 102 analysis is not concluding that "in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the articles or article from which it was so transformed" as required by 19 U.S.C. §2518(4)(B). In fact, we question whether CBP would be undertaking the required statutory analysis if it simply applied the tariff shift rules in Part 102.

Because the results of the case-by-case substantial transformation analysis and application of the Part 102 rules will likely yield the same result in the majority of cases, we have no objection to making the proposed regulation optional. Those importers of product made in Canada or Mexico who wish to use the Part 102 rules exclusively may do so. Others, like us, that benefit from separately evaluating a product under the traditional substantial transformation analysis for non-preferential origin other than marking may continue to do so. In either case the importer will need to keep appropriate records to support its determinations and meet reasonable care obligations. If not made optional, however, we strongly urge that this proposal be abandoned, Cisco opposes the proposal in its current form.

If you require further additional information, please do not hesitate to contact me at (408) 527-7766 or jfranze@cisco.com.

Best regards,

Jill Franze
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Cisco Systems, Inc.