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

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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:

The Computing Technology Industry Association (CompTIA), the leading association for the global information technology industry, thanks you for your time reviewing our response to the notice of proposed rulemaking (NPRM) to amend the U.S. Customs and Border Protection (CBP) regulations regarding non-preferential origin determinations for merchandise imported from Canada or Mexico. CompTIA has a longstanding Customs Committee consisting of over 260 customs compliance professionals from our member companies located across the U.S. We have an active Country of Origin Work Group which focuses on regulatory and compliance issues of importance to the membership.

This NPRM proposes that CBP will apply certain tariff-based rules of origin in the CBP regulations for all non-preferential determinations made by CBP, specifically, to determine when a good imported from Canada or Mexico has been substantially transformed resulting in an article with a new name, character, or use. The rule also proposes to modify the CBP regulations

for certain country of origin determinations for government procurement. Although the proposed amendments in the NPRM are intended to reduce administrative burdens and inconsistency for non-preferential origin determinations for merchandise imported from Canada or Mexico for purposes of the implementation of the USMCA, we would like to address the following issues that have significant financial and administrative impacts on industry as well as the ability of our CompTIA member companies to comply with the CBP regulations.

The NPRM states "Both the case-by-case and tariff shift methods are intended to produce the same determinations as to origin because both apply the same substantial transformation standard." While we agree that this is the intent, in practice there are cases where the two methods yield different origin determinations. This is particularly the case with technology products where programming or software can have an impact on substantial transformation. The Part 102 rules consider only a tariff shift of hardware components and ignore any impact of programming and software on substantial transformation. Our members report several instances in which the results differ because of the impact of programming or software on the substantial transformation analysis, including fact patterns that have resulted in CBP rulings confirming that a finished product has been substantially transformed.

Because such differences can exist, if this rule change were implemented, some importers will be faced with the burden of figuring out how to declare one country of origin on imports from Canada and Mexico into the United States, and a different country of origin on imports of the same goods into other countries. For many of our member companies, this will involve modifying IT systems to hold two different countries of origin for products they produce in Mexico or Canada and selecting the country of origin printed in their commercial invoices based on the destination country. This will be very expensive and will require considerable lead time. In addition, the rule would impose significant challenges on the many Mexican and Canadian suppliers to the United States that ship globally. Under the proposed rule, those suppliers will have to implement one rule of origin for products going to the United States and another for the same products going to any other jurisdiction. This inconsistency is likely to cause significant confusion and disruption, for the suppliers, U.S. importers, and CBP.

The NPRM states "This means that importers of goods from Canada and Mexico are subject to two different non-preferential origin determinations for imported merchandise: One for marking; and another for determining origin for other purposes. Consequently, these importers must also potentially comply with requirements to declare two different countries of origin for the same imported good (e.g., Canada and China). This burdens importers with unnecessary additional requirements, creates inconsistency, and reduces transparency." While this may have initially been a burden for importers, they have already figured out how to address it. By changing the regulations at this point, CBP is introducing a new burden, described in the points above.

In this NPRM, CBP is also proposing to make corresponding edits to Part 177 of title 19 of the CFR which applies to administrative rulings for the purposes of government procurement. To be compliant for purposes of the Trade Agreements Act (TAA), 19 U.S.C. § 2518(4)(B) Rule of Origin:

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) 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 article or articles from which it was so transformed.

We question whether assessing the origin of a product based on the Part 102 rules conforms to the statutory requirement to assess whether a product "has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from the article or articles from which it was so transformed." As noted above, this is particularly so for technology products in which programming or software have an influence on substantial transformation. Our members report that using a Part 102 analysis will cause some products to no longer be TAA compliant.

One CompTIA member currently has a product in which they sought a ruling for purposes of TAA several years ago. CBP agreed the company's manufacturing process resulted in a substantial transformation and a ruling was issued for classification in subheading 8443.31. The company's business unit has made considerable investments to align with the ruling to produce TAA compliant units. If CBP shifts to Part 102 marking rules, the company will get a differing origin and the product will be rendered non-TAA compliant.

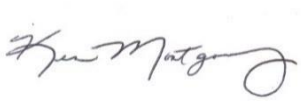
For companies to continue to offer those products to the U.S. Government where TAA compliance is required, companies would have to relocate manufacturing to another TAA compliant country - for no other reason than this rule change. This would be another huge cost and lead time item for companies to incur. Depending on the amount of U.S. Government business the company has, it could be cost prohibitive to move production, and in such cases the U.S. Government would simply no longer have access to certain products unless they waived the TAA compliance requirement.

The USMCA has been crucial to driving economic growth, job creation and economic integration across North America. We are therefore extremely concerned that the heavy regulatory burden this rule would impose on companies of all sizes undermines the spirit of the USMCA Agreement. As our economy recovers from the COVID pandemic, regulatory rulemaking should be aimed at reducing costs to accelerate North American trade and investment, not adding further burdens on American companies.

For the reasons discussed above CompTIA would recommend that CBP rescind the NPRM and retain the status quo or allow importers to choose the methodology used for the purpose of non-preferential origin determination for merchandise imported from Canada or Mexico.

Thank you for the opportunity to provide comments on the implications of this proposed rule. We look forward to continuing engagement on this matter.

Sincerely,



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