

HQ W563490

May 18, 2007

CLA-2 OT:RR:CTF:VS 563490 KSG

CATEGORY: Classification

Port Director
Bureau of Customs and Border Protection
555 Battery Street
San Francisco, CA 94111

RE: Eligibility of certain entries for duty-free treatment under the GSP;
wholly obtained and produced; 35% value-content requirement;
double substantial transformation; 19 CFR 10.176

Dear Director:

This is in response to your request for Internal Advice, dated May 3, 2006, concerning a Focused Assessment conducted by your port reviewing certain entries imported by Restoration Hardware ("RH") for which preferential tariff treatment under the Generalized System of Preferences ("GSP") was claimed. Specifically, this case involves six entries from the period beginning February 1, 2004 to January 31, 2005. Counsel for RH disagreed with the findings in the Pre-assessment report dated April 14, 2006.

A conference with RH was held at Headquarters on October 5, 2006, at their request. There was also a conference call with the office of Regulatory Audit at your port that took place on November 15, 2006, and several telephone conversations with the Team Leader, Import Specialist at your port. Further, additional submissions dated April 19, 2007, and May 15, 2007, related to labor costs are incorporated into the file. All of this information and the submitted information was considered with regard to the conclusions reached in this decision.

FACTS:

This case involves 6 entries by RH for which preferential tariff treatment under GSP was claimed. RH stated that all of the entries were wholly the growth, product, or manufacture of the country of origin.

Entry #1

Wood doormats were entered by RH on March 16, 2004. The country of origin claimed was Indonesia. The imported doormats were classified in subheading 4421.90, of the Harmonized Tariff Schedule of the United States (“HTSUS”).

In support of its claim, RH submitted the following:

- a GSP verification sheet,
- a summary of its calculation of the costs of material and labor,
- a certification of origin completed by the Indonesian government for Meranti timber wood and a translation of the Indonesian certification of origin,
- purchase orders for the sandpaper, glue, nails, teak oil and packaging,
- invoices,
- a vendor profile,
- a factory profile,
- a CF 7501,
- a CF 3461,
- an inspection certificate and
- a Form A.

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|------------------|--|
| Lumber | \$5.36 |
| Sandpaper | \$.46 |
| Glue | \$.40 |
| Nails | \$.28 |
| Teak Oil | \$.84 |
| Packaging | \$1.06 |

And labor costs of \$1.91, based on 2.77 hours to produce the doormat.

The appraised value of the good is \$12.60. To satisfy the value-content requirement, the value of originating materials (“VOM”) + direct costs of processing (“DCP”) must equal at least \$4.41.

Entry #2 (style 3710-0092)

1) Brass vise book-ends were entered by RH on May 10, 2004. The country of origin claimed was India. The imported book-ends were classified in subheading 7323.91, HTSUS.

In support of its claim, RH submitted the following:

- a GSP verification sheet completed by Dolphin Export Corporation, the producer of the book-ends,
- a summary of its calculation of the costs of material and labor,
- invoices,
- a certification as to the “wholly Indian” origin of the pig iron used signed by Akash India, the producer of the pig iron,
- a certification signed by Modern Steel, the producer of the cast iron scrap, attesting to its “wholly Indian” origin,
- a certification signed by Dolphin Export Corporation attesting to the “wholly Indian” origin of the pig iron and cast iron scrap used to produce the book-ends,
- a certification signed by Dolphin Export Corporation attesting to the “wholly Indian” origin of the lacquer, boxes, cartons and wood used to produce the vise book-ends,
- a certification by Pooja Traders attesting to the “wholly Indian” origin of the brass metallics,
- a translation of a certification by Vishnu Bhatu Bhandar attesting to the wholly Indian origin of brass scrap supplied by it to Dolphin Exports, and

- a certification by Dolphin Export Corporation attesting to the Indian origin of the chemicals, boxes and cartons used in producing the frog prince book-ends.
- a vendor profile for Dolphin Export Corporation,
- a factory profile of Dolphin Export Corporation,
- a CF 7501,
- a CF 3461,
- a bill of lading,
- a packing list, and
- Form A's for the imported book-ends.

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|-------------------|--|
| Pig iron | \$2.02 |
| Wood | \$.56 |
| Thermacoule boxes | \$.32 |
| Gift boxes | \$.45 |
| Master boxes | \$.19 |
| Lacquer | \$.42 |

In the original submission, labor costs were stated to be \$9.74 for the vise book-ends. In the submission dated April 19, 2007, counsel has submitted data on labor costs in India stating that the top hourly rate in India for the relevant time period was \$.77/hour for persons involved with the casting process, with the hourly rate of either \$.69 or \$.55/hour for the other processes. Counsel submitted an excerpt from the Uttar Pradesh minimum wages rules 1952 which state that workers paid on a piecework basis cannot be disadvantaged and their wages must be consistent with the minimum wages. Counsel also submitted a letter from an Indian law firm stating that the minimum wage rate for this period in India was \$.30 per hour.

Further, in the May 15, 2007, submission, counsel submitted a detailed description of the work performed to produce the book-ends and photographs showing the process and the facilities. This submission illustrated that the processing in India is primitive at best. This chart summarizes the basis for their recalculation of the labor costs to be \$3.56

per set of book-ends based on an average daily output of 42 sets of book-ends a day:

| Stage | workers | Hourly wage | Production/day | Total daily labor | Labor cost/unit |
|-------------------------|---------|-------------|----------------|-------------------|-----------------|
| Casting/ Filing | 5 | \$.77 | 30 sets | \$30.80 | \$1.02 |
| Cleaning/ Threading | 1 | \$.55 | 13 sets | \$4.40 | \$.33 |
| Machining Wire brush | 2.5 | \$.69 | 22 sets | \$13.80 | \$.62 |
| Cleaning | 2 | \$.55 | 12 sets | \$8.80 | \$.73 |
| Lacquering | 4 | \$.55 | 42 sets | \$17.60 | \$.42 |
| Assembly/ | 4 | \$.55 | 40 sets | \$17.60 | \$.40 |
| | | | | TOTAL | \$3.56 |

The material costs equal \$3.96. The appraised value of the good is \$16.55. To satisfy the value-content requirement, the VOM + DCP must equal at least \$5.79. The \$3.96 material costs plus the \$3.56 labor costs equal \$7.52, which is 45.4% of the appraised value of the book-ends.

2) Frog prince book-ends entry

Brass frog prince book-ends were entered by RH. The country of origin claimed was India. The imported book-ends were classified in subheading 7323.91, HTSUS.

In support of its claim, RH submitted the following:

- a GSP verification sheet,
- a summary of its calculation of the costs of material and labor,
- invoices,
- signed certifications as to origin,
- a vendor profile,
- a factory profile,
- a CF 7501,
- a CF 3461,

- a bill of lading,
- a packing list and
- a Form A.

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|-------------------|--|
| Brass scrap | \$5.12 |
| Chemicals | \$.28 |
| Thermocoule boxes | \$.58 |
| Gift boxes | \$.51 |
| Master boxes | \$.09 |

Labor costs are stated to be \$6.02 for the frog prince book-ends. The factory profile indicates that this factory pays \$.30 per hour.

The appraised value of the good is \$12.60. To satisfy the value-content requirement, the VOM + DCP must equal at least \$4.41.

Entry #3

Wood picture frames of various sizes (20 styles) were entered by RH on January 6, 2005. The country of origin claimed was Thailand. The imported frames were classified in subheading 4414.00, HTSUS.

In support of its claim, RH submitted the following:

- GSP verification sheets completed by the foreign producer (Modern Frame Co. Ltd.) that indicate the quantities of material used per unit and the purchase price and supplier (ex. Baillie Lumber Co. for the wood),
- a summary of its calculation of the costs of material and labor,
- invoices,
- certifications as to origin signed by the foreign producer,
- a vendor profile,
- Form A's and
- a description of the product from the RH catalogue.

Since this entry involves 20 styles, a sampling of three styles was reviewed.

1) For item No. 3410-0123, a 4 x 4 frame, the following applies:

| <u>Materials</u> | <u>C/O</u> | <u>Total unit cost claimed including DCP</u> |
|----------------------------|------------|--|
| Wood | U.S. | \$.91 |
| Glass | TH | \$.08 |
| Paint | TH | \$.37 |
| Metal stand & backboard | TH | \$.21 |
| packaging | TH | \$.58 |

Labor costs are stated to be \$1.37 for the 4x4 frame, based on 2.78 hours of labor at a rate of \$.5625 per hour.

The appraised value of the good is \$4.15. To satisfy the value-content requirement, the VOM + DCP must equal at least \$1.45.

2) For item No. 3410-0122, a 4 x 4 frame, the following applies:

| <u>Materials</u> | <u>C/O</u> | <u>Total unit cost claimed including DCP</u> |
|----------------------------|------------|--|
| Wood | U.S. | \$1.04 |
| Glass | TH | \$.09 |
| Paint | TH | \$.43 |
| Metal stand & backboard | TH | \$.24 |
| packaging | TH | \$.66 |

Labor costs are stated to be \$1.37 for this 4x4 frame, based on 2.78 hours at a rate of \$.5625 per hour.

The appraised value of the good is \$4.73. To satisfy the value-content requirement, the VOM + DCP must equal at least \$1.66.

3) For item No. 3410-0065, a black multi collage wood frame, the following applies:

| <u>Materials</u> | <u>C/O</u> | <u>Total unit cost claimed including DCP</u> |
|------------------|------------|--|
| Wood | U.S. | \$2.67 |
| Glass | TH | \$.24 |
| Paint | TH | \$1.09 |
| Metal stand | TH | \$.61 |

| | | |
|--------------------------|----|--------|
| & backboard packaging | TH | \$1.70 |
|--------------------------|----|--------|

Labor costs are stated to be \$4.02, based on 7.15 hours at a rate of .5625 per hour for this frame style.

The appraised value of the good is \$12.14. To satisfy the value-content requirement, the VOM + DCP must equal at least \$4.25. The material costs, excluding the U.S.-origin wood equal \$3.64.

Entry #4

Fourteen styles of brass pulls were entered by RH on August 11, 2004. The country of origin claimed was India. The imported pulls were classified in subheading 8302.42, HTSUS.

In support of its claim, RH submitted the following:

- GSP verification sheets completed by the foreign producer (Aglow Exports) for the 14 styles that indicate the quantities of material used per unit and the purchase price and supplier (ex. Chaddha Brass for the brass),
- a summary of its calculation of the costs of material and labor,
- an affidavit from Chaddha Brass stating that the brass sold to Aglow Exports is wholly the produce of India,
- an invoice and affidavit as to the Indian origin of the brass screws from the foreign manufacturer,
- invoices for the foam, poly bags and the packing materials,
- an invoice for the chemicals,
- a vendor profile,
- a factory profile,
- CF 7501's,
- CF 3461's, and
- a packing sheet.

We have reviewed a sampling of three styles for the purposes of this ruling:

1) For item No. 2407-0212, a silver plated brass pull, the following applies:

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|----------------------|--|
| Brass | \$.17 |
| Screw brass | \$.04 |
| Foam bag | \$.01 |
| Poly bag | \$.02 |
| Inner box | \$.05 |
| Carton | \$.10 |
| Antique & lacquering | |
| Chemicals | \$.06 |

Labor costs are stated to be \$.25 for the silver plated brass pulls.

The appraised value of the good is \$1.10. To satisfy the value-content requirement, the VOM + DCP must equal at least \$.385. The material costs equal \$.45.

2) For item No. 2407-0215, an embossed pull, the following applies:

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|----------------------|--|
| Brass | \$.11 |
| Screw brass | \$.04 |
| Foam bag | \$.009 |
| Poly bag | \$.016 |
| Inner box | \$.05 |
| Carton | \$.10 |
| Antique & lacquering | |
| Chemicals | \$.06 |

Labor costs are stated to be \$.25 for the embossed pulls.

The appraised value of the good is \$1.10. To satisfy the value-content requirement, the VOM + DCP must equal at least \$.385. The material costs equal \$.385.

3) For item No. 2407-0221, a fan pull, the following applies:

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|------------------|--|
| Brass | \$.2 |
| Screw brass | \$.04 |

10

| | |
|-----------------------------------|---------|
| Foam bag | \$.009 |
| Poly bag | \$.016 |
| Inner box | \$.05 |
| Carton | \$.10 |
| Antique & lacquering Chemicals | \$.06 |

Labor costs are stated to be \$.25 for the fan pulls.

The appraised value of the good is \$.90. To satisfy the value-content requirement, the VOM + DCP must equal at least \$.32. The material costs equal \$.475.

Entry #5

Ten styles of brass lanterns were entered by RH on February 13, 2004. The country of origin claimed was India. The imported lanterns were classified in subheading 9405.50, HTSUS.

In support of its claim, RH submitted the following:

- GSP verification sheets completed by the Indian producer (Zakaria Shahid Industries) for the 10 styles that indicate the quantities of material used per unit and the purchase price and supplier (ex. Chaddha Brass Limited for the brass),
- a summary of its calculation of the costs of material and labor,
- an invoice from Chaddha Brass with a certification as to the “wholly Indian” origin of the brass sold to the Indian producer,
- a signed certification from the Indian glass producer (Suneja Hardware Store) as to the “wholly Indian” origin of the glass sold to the Indian producer,
- a vendor profile for the Indian producer, and
- a factory profile for the Indian producer.

For the purposes of this ruling letter, we have reviewed three samples.

1) For Style No. 3710-0122, a large bronze lantern, the following applies:

| | |
|------------------|--|
| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|------------------|--|

| | |
|-----------|--------|
| Brass | \$2.13 |
| Glass | \$1.02 |
| Packaging | \$.68 |
| Lacquer | \$.89 |

Labor costs are stated to be \$4.11 for the large bronze lantern.

The appraised value of the good is \$10.45. To satisfy the value-content requirement, the VOM + DCP must equal at least \$3.66.

2) For Style No. 3710-0119, a mini bronze lantern, the following applies:

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|------------------|--|
| Brass | \$.32 |
| Glass | \$.29 |
| Packaging | \$.26 |
| Lacquer | \$.40 |

Labor costs are stated to be \$.75 for the mini bronze lantern.

The appraised value of the good is \$3.22. To satisfy the value-content requirement, the VOM + DCP must equal at least \$1.13.

3) For Style No. 3103-0125, a small lantern, the following applies:

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|------------------|--|
| Brass | \$1.22 |
| Glass | \$.58 |
| Packaging | \$.27 |
| Lacquer | \$.52 |

Labor costs are stated to be \$1.71 for the small lantern.

The appraised value of the good is \$6.65. To satisfy the value-content requirement, the VOM + DCP must equal at least \$2.33.

Entry #6

Eight styles of metal photo frames were entered by RH on August 6, 2004. The country of origin claimed was India. The imported frames were classified in subheading 8306.30, HTSUS.

In support of its claim, RH submitted the following:

- GSP verification sheets completed by the foreign producer (Dynatech Exports) for the 8 styles that indicate the quantities of material used per unit and the purchase price and supplier (ex. M/s Century NF for the zincs),
- a summary of its calculation of the costs of material and labor,
- invoices,
- a signed certification as to the “wholly Indian” origin of the zinc alloy signed by Century NF Casting, the foreign supplier,
- a certification attesting to the “wholly Indian” origin of the glass sold to Dynatech Exports signed by Mohd. Aslam, the foreign supplier,
- a certification signed by m/s Iftexhar Back attesting to the “wholly Indian” origin of the MDF board,
- a factory profile for M/S Dynatech Exports,
- CF 3461,
- bill of lading,
- Form A’s for the imported frames, and
- packing lists.

For the purposes of this ruling, we have sampled three styles.

1) For Style No. 3405-0257, a 3 x 3 frame, the following applies:

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|-------------------------------|--|
| Zinc | \$.69 |
| Glass | \$.19 |
| Lacquer | \$.42 |
| MDF board & Velveteen wrap | \$.97 |
| Inner box | \$.16 |
| Packing material | \$.22 |
| Master carton | \$.15 |

Labor costs are stated to be \$1.10 for the 3x3 frame.

The appraised value of the good is \$5.10. To satisfy the value-content requirement, the VOM + DCP must equal at least \$1.79. The material costs equal \$2.80.

2) For Style No. 3405-0259, a photo frame, the following applies:

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|-------------------------------|--|
| Zinc | \$1.18 |
| Glass | \$.24 |
| Lacquer | \$.57 |
| MDF board & Velveteen wrap | \$1.40 |
| Inner box | \$.26 |
| Packing material | \$.43 |
| Master carton | \$.43 |

Labor costs are stated to be \$1.67 for this frame.

The appraised value of the good is \$8.10. To satisfy the value-content requirement, the VOM + DCP must equal at least \$2.84. The material costs equal \$4.51.

3) For Style No. 3405-0260, a photo frame, the following applies:

| <u>Materials</u> | <u>Total unit cost claimed including DCP</u> |
|-------------------------------|--|
| Zinc | \$1.56 |
| Glass | \$.31 |
| Lacquer | \$.62 |
| MDF board & Velveteen wrap | \$1.59 |
| Inner box | \$.49 |
| Packing material | \$.52 |
| Master carton | \$.51 |

Labor costs are stated to be \$2.12 for this frame.

The appraised value of the good is \$9.90. To satisfy the value-content requirement, the VOM + DCP must equal at least \$3.47. The material costs equal \$5.60.

Regulatory Audit completed a draft Focused Assessment dated April 14, 2006, which was also reviewed and is part of the record in this case.

ISSUE:

Whether the imported goods described in the six entries above are eligible for preferential tariff treatment under the GSP.

LAW AND ANALYSIS:

Under the GSP, eligible articles the growth, product or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of (1) the cost or value of materials produced in the BDC, plus (2) the direct costs of the processing operations performed in the BDC, is equivalent to at least 35 percent of the appraised value of the article at the time of entry into the U.S. See 19 U.S.C. 2463(a)(2)(A).

General Note 3(c)(i), HTSUS, provides, in part, that special tariff treatment under the GSP is indicated in the "Special" subcolumn in the tariff by the symbols "A", "A*," or "A+".

In this case, all of the six entries are classified in GSP-eligible provisions. Further, all the countries where the processing occurred are designated as a beneficiary developing country for GSP purposes under General Note 4(a), HTSUS.

The "product of" requirement means that to receive duty-free treatment, an article either must be made of materials "wholly the growth, product or manufacture of" the BDC, or if made of materials imported into the BDC, those materials must be substantially transformed in the BDC into a new and different article of commerce. See 19 CFR 10.176(a). A substantial transformation occurs "when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process." Texas Instruments Inc. v. United States, 681 F.2d 778 (1982).

In this case, entries #1, 2, 4, 5, and 6 are claimed to be wholly the growth, product or manufacture of the BDC ("wholly the growth").

For entry #1, RH submitted purchase orders for all the materials used to manufacture the doormat, a factory profile of the claimed factory of production in the BDC, and a Form A certifying that the door mat was made in Thailand. We note that the importer has not submitted documentation as to the origin of the sandpaper, glue, nails, teak oil and packaging which would need to be produced in Thailand in order to be considered "wholly the growth" of Thailand. However, even if this good

was not wholly the growth of the BDC, we find that the wood and the other materials that are manufactured into a doormat in a factory in Thailand would be considered to be a substantial transformation. Therefore, the doormat would be considered a “product of” Thailand.

For entry #2, RH submitted signed certifications by the foreign producers of the pig iron, the cast iron scrap, the lacquer boxes, wood, cartons, brass metalics, chemicals, and other boxes utilized to manufacture the brass book-ends. RH also submitted a certification from the foreign manufacturer of the book-ends and a factory profile of the foreign manufacturer in India. Based on the above, we conclude that this entry satisfies the “wholly the growth” standard. Even if this good did not satisfy the “wholly the growth” standard, we find that utilizing all the above materials to manufacture book-ends in a factory in India would constitute a substantial transformation of the materials in the BDC.

For entry #3, the U.S.-origin wood undergoes a change in name, character and use and is substantially transformed in Thailand into a picture frame. Therefore, entry #3 satisfies the “product of” requirement.

For entry #4, RH submitted a signed affidavit from the foreign producer of the brass, the foreign producer of the screws, a signed certification from the foreign producer that all the materials are “wholly the growth” of India, and a factory profile describing the factory where the goods are produced. Based on the above, we conclude that this entry satisfies the “wholly the growth” standard. Even if this good did not satisfy the “wholly the growth” standard, we find that utilizing all the above materials to manufacture pulls in a factory in India would constitute a substantial transformation of the materials in the BDC.

For entry #5, the brass lanterns, RH submitted signed affidavits from the foreign producers of the brass and the glass stating that they were “wholly the growth” of India. There was no certification for the lacquer to show that it was “wholly the growth” of India. In the GSP verification sheet, the foreign manufacturer certifies that the materials are all a product of India. However, even if the brass lanterns were not considered “wholly the growth” of India, we find that the brass, glass and lacquer that are manufactured into a lantern in a factory in India would be substantially transformed. Therefore, the brass lanterns are considered a “product of” India.

For entry #6, the metal photo frames, RH submitted signed affidavits from the foreign producers of the zinc alloy, the glass, and the MDF board stating that they were “wholly the growth” of India. There is also a certification from the foreign producer listing all the materials, the

producer of the materials and a statement that all the materials were “wholly produced” in India. Accordingly, we find that the metal photo frames are a “product of” India.

Therefore, all of the entries satisfy the “product of” requirement.

Further, based on the facts presented, it appears that all the entries satisfy the “imported directly” requirement in this case.

To be eligible for duty-free treatment under the GSP statute, merchandise must also satisfy the 35% value-content requirement. 19 U.S.C. 2463(a)(2)(A) states that “the duty-free treatment provided under this sub-chapter shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if— that article is imported directly from a beneficiary developing country into the customs territory of the United States; **and** (ii) the sum of (I) the cost or value of the materials produced in the beneficiary developing country ...plus (II) the direct costs of processing operations performed in such beneficiary developing country or such member countries, is not less than 35 percent of the appraised value of such article at the time it is entered.”

If an article consists of materials that are imported into a BDC, the cost or value of these materials may be counted toward the 35% value-content requirement only if they undergo a double substantial transformation in the BDC. See 19 CFR 10.177(a)(2). Materials imported into the BDC must first be substantially transformed into a new and different article of commerce which becomes “material produced” and these materials produced in the BDC must then be substantially transformed into a new and different article of commerce (the final article). This intermediate product must be a distinct article of commerce. An article of commerce is commercially recognizable as an article which is readily susceptible of trade and one that persons might well wish to buy and acquire for their own purposes of consumption or production. See Azteca Mill Co. v. U.S., 703 F. Supp. 949 (CIT 1988), and F.F. Zuniga a/c Refractorios Monterrey, S.A. v. United States, 996 F.2d 1203 (Fed. Cir. 1993).

The regulatory language set forth in 19 CFR 10.176(c), which is titled “Country of origin criteria” states that “merchandise which is wholly the growth, product, or manufacture of a BDC...shall normally be presumed to meet the requirements set forth in this section.” Then, 19 CFR 10.177, which addresses the topic of “Cost or value of materials produced in the beneficiary developing country”, states that both materials “wholly produced” in the BDC and materials substantially transformed in the BDC must satisfy the “produced in the BDC” requirement. Therefore,

this regulatory language mirrors the statutory requirement that all imported goods must satisfy the 35% value-content requirement, whether the materials are “wholly produced” in the BDC or substantially transformed in the BDC.

Counsel argued that if material costs alone satisfy the 35% value-content requirement, the auditors need look no further. CBP stated in Treasury Decision (“T.D.”) 76-100, dated March 30, 1976, that “the 35 percent criterion can be satisfied entirely by the cost or value of materials produced in the beneficiary developing country, the direct costs of processing operations, or any combination of the two.” We concur with counsel on this point.

The issue presented in this case is whether the six entries involved have satisfied the 35% value-content requirement. This is a factual determination which must be made on an entry by entry basis.

We note that RH used as the denominator the “FOB selling price” of the imported goods. The statute and regulations clearly state that the denominator should be the “appraised value” of the goods “at the time it is entered.” The appraised value is the value of the imported goods once liquidated. If the entry is not liquidated, we would look at the customs value stated on the Customs entry documents. CBP has provided the appraised value of the entries in the instant case.

Your port raised the issue of whether CBP must be able to trace purchase orders and invoices to inventory and production records to determine if materials may be counted towards the 35% value-content requirement.

The regulations state at 19 CFR 10.177(c) that “if the pertinent information needed to compute the cost or value of the materials is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.”

The purpose of the GSP program is to assist developing countries to grow their economies. In SDI Technologies Inc. v. United States, 977 F. Supp. 1235 (CIT 1997), the court quoted from the Senate Report stating that “Congress originally enacted the GSP program to extend preferential tariff treatment to the exports of less-developed countries to encourage economic diversification and export development within the developing world.”

However, as your port points out, auditors must follow Generally Accepted Government Auditing Standards and obtain sufficient,

competent, relevant evidence to provide a reasonable basis for the auditor's finding and conclusions. Satisfying both of these objectives requires a fine balancing of interests. As stated above, the regulations require that the importer provide **pertinent information** needed to compute the cost or value of the materials.

In this case, there is no assertion or evidence submitted that any of the materials are produced in a country other than the GSP country or that the imported goods were manufactured in a country other than the GSP country. For entries 2, 3, 4, 5, and 6, as detailed above, the importer has submitted invoices, purchase orders, and sometimes receipts, to show the costs or value of materials used to produce the imported goods. With regard to the origin of the materials and the country of origin of the manufacturing operations where the goods were produced, the importer has submitted certifications from the supplier supporting the claimed origin and factory profiles describing in detail the place of production and the equipment at the place of production.

We find that in this case, based upon the particular facts involved, the submission by the importer of the documentation described above for entries 2, 3, 4, 5, and 6, is sufficient in the absence of conflicting information to support the value-content requirement for the GSP.

Entry 1

For entry #1, we have reviewed the records and concur with Regulatory Audit that the description of the type of wood used in the Indonesian certificate of origin (Meranti timber) and the purchase order does not match the description of the type of wood stated in the Customs entry documents (Nyatoh). Since the descriptions of the wood do not match, we find that the importer has not shown that the wood used to make this good is "wholly produced" in Indonesia. Further, there is no evidence that the wood undergoes a double substantial transformation. Therefore, the value of the wood cannot be included in the calculation to determine if the value/content requirement has been met in this case. When the value of the wood is excluded, the value of the remaining materials and the claimed direct labor costs submitted by the importer equal \$3.50 and the 35% value content requirement is not met (\$4.41).

Entry 2

For entry #2, the vise book-ends, the material costs submitted by the importer equal \$3.96. In the April 19, 2007 submission, counsel stated that certain materials (sand, coal and tar) had not been previously included in the submitted material costs. However, there were no

purchase orders, invoices or other evidence submitted to substantiate the costs or origin of these materials. Therefore, we have not included these alleged material costs.

Based on the April 19, 2007 submission, we find that the stated wage rate of \$.77 hourly for casting work and between \$.55 and \$.69 hourly for other wages is a reasonable rate for India for the relevant time period. Regulatory Audit questioned the total packaging costs and labor costs claimed by the importer in the original submission. We share their concern that some of these figures appear to be inflated; the time claimed per unit to produce the goods does not appear to be reasonable. We are persuaded by the evidence submitted in the May 15, 2007, submission and the accompanying photographs that the re-adjusted figure of \$3.56 for the labor in India to produce a set of book-ends is credible. Accordingly, we find that the value-content requirement is met with regard to the vise book-ends in entry 2.

With regard to the frog prince book-ends, the value-content requirement is satisfied based on the value of the brass scrap alone. Therefore, we find that the frog prince book-ends are eligible for preferential tariff treatment under the GSP.

Entry 3

With regard to entry #3, the importer claimed U.S.-origin wood as "wholly produced". For the purposes of the GSP, U.S. origin materials cannot be counted toward the 35% value-content requirement unless it satisfies the double substantial transformation standard in the BDC. While manufacturing a frame from wood, constitutes a substantial transformation, there is no double substantial transformation in the BDC. Therefore, the U.S.-origin wood cannot be counted toward satisfaction of the value-content requirement.

For the first sample, the 4 x 4 frame, without the inclusion of the value of the wood, the materials cost equal \$1.24. The importer must be able to support a finding of \$.21 of direct labor costs to satisfy the value-content requirement in this case. As stated above, the April 19, 2007, submission included documents from the American Chamber of Commerce in Bangkok and Thailandlaw.com as well as the vendor's pay records that show that wage rates of between \$.49 and \$.54 per hour are reasonable for Thailand for this time period. Assuming that the total labor time for each frame is equal to about 25 minutes, the minimum value-content would be met for this good. We find that this is reasonable and therefore, the importer has shown that the 35% value-content requirement is met for this sample.

For the second sample, a 4 x 4 frame, excluding the value of the wood, the material costs equal \$1.42. The importer must be able to support a finding of \$.24 of direct labor costs to satisfy the value-content requirement in this case. Assuming that the total labor time for each frame is equal to under 30 minutes, the minimum value-content would be met for this good. Based on the facts presented, we find that the importer has shown that the value-content requirement is met for sample two.

For the third sample, the black multi collage frame, excluding the value of the wood, the material costs equal \$3.64. The importer must be able to support a finding of \$.61 of direct labor costs to satisfy the value-content requirement in this case. Therefore, each frame would have to involve more than one hour of labor in order for this good to qualify. We questioned why the amount of labor for this frame significantly exceeded the other frames. Counsel stated in the May 15, 2007, submission that this frame is a collage frame, which is larger and more complex to produce. Accordingly, we find that the labor costs of more than one hour are reasonable based on the complexity of the imported good. Based on the facts presented, we find that the importer has shown that the value-content requirement is met for sample three.

Entry 4

For the three brass pulls sampled, the pulls satisfy the 35% value-content requirement based on the value of the materials alone. As stated above, quantities of material used per unit are listed on a GSP verification sheet prepared by the foreign producer. Therefore, we find that this entry is eligible for preferential tariff treatment under the GSP.

Entry 5

For the three styles of bronze lanterns sampled, the material costs for the brass and glass can be counted towards the 35% value-content requirement. For sample one, the value of the brass and glass is \$3.15. Labor costs would have to be at least \$.51 in order to meet the 35% value-content requirement.

For sample two, the value of the brass and glass are \$.61. Labor costs would have to be at least \$.52 in order to meet the 35% value-content requirement.

For sample three, the value of the brass and glass are \$1.80. Labor costs would have to be at least \$.53 in order to meet the 35% value-content requirement.

In the April 19, 2007, submission, counsel submitted evidence that the hourly rates in India for the relevant time period were between \$.55 and \$.69 per hour. Based on these rates, we find that the labor costs of between \$.51 and \$.53 to manufacture the lanterns is reasonable. Therefore, we find that this entry is eligible for preferential tariff treatment under the GSP.

Entry 6

For the three styles of photo frames, the goods satisfy the value-content requirement based on the costs of the materials alone. As stated above, quantities of material used per unit are listed on a GSP verification sheet prepared by the foreign producer. Therefore, we find that this entry is eligible for preferential tariff treatment under the GSP.

HOLDING:

We find that the entry #2, #3, #4, #5, and #6 are eligible for preferential tariff treatment under the GSP. With regard to entry #1, the importer has not submitted satisfactory evidence that the value-content requirement has been met.

This decision should be mailed by your office to the party requesting Internal Advice no later than 60 days from the date of this letter. On that date, the Office of Regulations and Rulings will make the decision available to CPB personnel, and to the public on the CPB Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

Monika R. Brenner
Chief, Valuation & Special Programs Branch