

Presidential Documents

Proclamation 8405 of August 31, 2009

To Adjust the Rules of Origin Under the North American Free Trade Agreement and for Other Purposes

By the President of the United States of America

A Proclamation

1. In Presidential Proclamation 8097 of December 29, 2006, pursuant to the authority provided in section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3006(a)) (the “1988 Act”), the President modified the Harmonized Tariff Schedule of the United States (HTS) to reflect amendments to the International Convention on the Harmonized Commodity Description and Coding System (the “Convention”).

2. Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (NAFTA) with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (Public Law 103–182) (the “NAFTA Implementation Act”), incorporated in the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the NAFTA.

3. In order to ensure the continuation of the staged reductions in rates of duty under the NAFTA for originating goods of Mexico in HTS tariff categories that were modified to reflect amendments to the Convention, Presidential Proclamation 8097 made modifications to the HTS that the President determined were necessary or appropriate to carry out the duty reductions proclaimed in Proclamation 6641.

4. Canada and Mexico are parties to the Convention. Because the substance of changes to the Convention are reflected in slightly differing form in the national tariff schedules of the parties to the NAFTA, the rules of origin set out in that Agreement must be changed to ensure that the tariff and certain other treatment accorded under the NAFTA to originating goods will continue to be provided under the tariff categories that were modified in Proclamation 8097. The NAFTA parties, the United States, Canada, and Mexico, have agreed to make these changes.

5. Section 202 of the NAFTA Implementation Act (19 U.S.C. 3332) provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as part of the HTS, the rules of origin set out in the NAFTA and to proclaim any modifications to such previously proclaimed rules of origin, including those necessary to implement an agreement with NAFTA countries under paragraph 2 of section 7 of Annex 300-B of the NAFTA, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

6. The NAFTA parties have agreed to modify certain NAFTA rules of origin. Modifications to the NAFTA rules of origin reflected in general note 12 to the HTS are therefore necessary to ensure the continuation of tariff and certain other treatment accorded under the NAFTA to originating goods in tariff categories modified in Proclamation 8097 and to carry out the duty reductions proclaimed in Proclamation 6641. The consultation and

layover requirements of section 103(a) of the NAFTA Implementation Act were met December 10, 2007, with respect to the proposed modifications.

7. I have determined that the modifications to the HTS proclaimed in this proclamation pursuant to section 202 of the NAFTA Implementation Act are necessary to implement an agreement with the NAFTA parties under paragraph 2 of section 7 of Annex 300-B of the NAFTA. In addition, I have determined that the modifications pursuant to section 1206(a) of the 1988 Act are in conformity with the obligations of the United States under the Convention and do not run counter to the national economic interest of the United States.

8. Certain necessary modifications to the HTS to conform it to the Convention were inadvertently omitted from Proclamation 8097. I have determined that technical corrections to the HTS are necessary to conform the HTS to the Convention.

9. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (USIFTA), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the "USIFTA Implementation Act") (19 U.S.C. 2112 note).

10. Section 4(b) of the USIFTA Implementation Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the Agreement.

11. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the "2004 Agreement"). On December 10, 2008, the United States entered into an agreement with Israel to extend the 2004 Agreement through December 31, 2009, in order to allow for additional time to negotiate a successor arrangement to the 2004 Agreement.

12. In Presidential Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

13. In Presidential Proclamation 8334 of December 31, 2008, the President determined that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA to extend such duty-free treatment through December 31, 2009. I have determined that a modification to the HTS is necessary to provide the intended tariff treatment.

14. Section 604 of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other Acts, affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction. Section 1206(c) of the 1988 Act, as amended (19 U.S.C. 3006(c)), provides that any modifications proclaimed by the President under section 1206(a) of that Act may not take effect before the thirtieth day after the date on which the text of the proclamation is published in the *Federal Register*.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 1206(a) of the 1988 Act, section 202 of the NAFTA Implementation Act, section 4(b) of the USIFTA Implementation Act, and section 604 of the 1974 Act, do proclaim that: (1) In order to reflect in the HTS the modifications to the rules of origin under the NAFTA, general note 12 to the HTS is modified as provided in Annexes I and II of Publication 4095 of the United States International Trade Commission entitled, "Modifications to the Harmonized Tariff Schedule of the United States to Adjust Rules of Origin Under the North American Free Trade Agreement," which is incorporated by reference into this proclamation.

(2) In order to make technical corrections to the HTS necessary to conform it to the Convention, the HTS is modified as provided in Annex III of Publication 4095.

(3) In order to provide the intended duty treatment under the 2004 Agreement as extended through December 31, 2009, the HTS is modified as provided in Annex IV of Publication 4095.

(4) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5) The modifications to the HTS set forth in Annexes I and II of Publication 4095 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the later of (i) October 1, 2009, or (ii) the thirtieth day after the date of publication of this proclamation in the *Federal Register*.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of August, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large, stylized initial "B" and a circular flourish.